

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

F. T. MEYER
PLAINTIFF IN ERROR

vs.

PACIFIC MACHINERY COMPANY
DEFENDANT IN ERROR

TRANSCRIPT OF RECORD

Upon Writ of Error to the District Court of the United
States for the District of Oregon

Filed

JAN 22 1917

F. D. Monckton,
Clerk.

No. _____

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

F. T. MEYER
PLAINTIFF IN ERROR

vs.

PACIFIC MACHINERY COMPANY
DEFENDANT IN ERROR

TRANSCRIPT OF RECORD

Upon Writ of Error to the District Court of the United
States for the District of Oregon

INDEX	Page
Amended Complaint	4
Amended Complaint, Exhibit A to.....	8
Answer	17
Assignment of Errors.....	201
Bill of Exceptions	33
Testimony for Plaintiff:	
Ira Bronson.....	55
Cross examination	58
Re-direct examination.....	66
Edward I. Garrett.....	35-96
Cross examination	102
Thomas S. Garrett.....	36
Cross examination	44
Re-direct examination	54
Re-cross examination.....	55
Testimony for Defendant:	
William G. Bohn.....	70
Cross examination	79
Re-direct examination	87
Re-cross examination.....	93
J. J. Cook.....	117
Cross examination	119
Re-direct examination	120
Re-cross examination.....	121
C. D. Latourette	121
Cross examination	126
D. C. Latourette	107
Cross examination	109

INDEX	Page
Re-direct examination	112
Re-cross examination.....	113
F. T. Meyer.....	114
Cross examination	115
Plaintiff's Exhibits:	
A	34-39
B	67
Defendant's Exhibits:	
2	62-137
3	75-142
4	84-142
5	84-155
6	89-167
7	90
8	95-176
Judgment Roll No. 5205.....	106-179
Findings of Fact and Conclusions of Law	
requested by defendant.....	131
Bond on Writ of Error.....	206
Citation	1
Clerk's Certificate to Transcript.....	210
Complaint, Amended	4
Conclusions of Law requested by defendant.	131
Exhibits (See Bill of Exceptions)	
Exhibit A to Amended Complaint.....	8
Findings of the Court.....	30
Findings of Fact requested by defendant...	131
Judgment	31

INDEX	Page
Opinion	25
Order allowing Writ of Error.....	205
Petition for Writ of Error.....	200
Praecipe for Transcript.....	209
Reply	22
Stipulation waiving Jury.....	209
Testimony (See Bill of Exceptions)	
Transcript, Clerk's Certificate to.....	210
Transcript, Praecipe for.....	209
Writ of Error	2
Writ of Error, Bond on	206
Writ of Error, Order allowing	205
Writ of Error, Petition for	200

No.

*United States Circuit Court of Appeals for the
Ninth Circuit.*

F. T. MEYER,
Plaintiff in Error,

vs.

THE PACIFIC MACHINERY COMPANY,
a corporation,
Defendant in Error.

NAMES AND ADDRESSES OF ATTORNEYS OF RECORD:

Dolph, Mallory, Simon & Gearin
and Hall S. Lusk,
Mohawk Building, Portland, Oregon,
for the Plaintiff in Error.

Ira Bronson,
Coleman Building, Seattle, Washington,
for the Defendant in Error.

*In the District Court of the United States for the
District of Oregon.*

THE PACIFIC MACHINERY COMPANY, a corporation,

Plaintiff and Defendant in Error,

v.

F. T. MEYER,

Defendant and Plaintiff in Error.

CITATION ON WRIT OF ERROR.

United States of America, }
District of Oregon. } ss.

To the Pacific Machinery Company, a corporation,
Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, within thirty days from the date hereof, pursuant to a Writ of Error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein F. T. Meyer is Plaintiff in Error and you are Defendant in Error, to show cause, if any there be, why the judgment mentioned in said writ of error should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Portland, in said district, this 14th day of November, in the year of our Lord, one thousand nine hundred and sixteen.

CHAS. E. WOLVERTON, Judge.

Due service of the foregoing citation on writ of error admitted this 16th day of November, A. D. 1916.

BRONSON, ROBINSON & JONES,
Attorneys for Defendant in Error.

Filed, November 17, 1916.

G. H. MARSH, Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

F. T. MEYER,

Plaintiff in Error,

vs.

THE PACIFIC MACHINERY COMPANY, a corporation,

Defendant in Error.

WRIT OF ERROR.

The United States of America, ss.

THE PRESIDENT OF THE UNITED STATES
OF AMERICA.

To the Judge of the District Court of the United
States for the District of Oregon, Greeting:

Because in the records and proceedings, as also
in the rendition of the judgment of a plea which is
in the District Court before the Honorable Charles
E. Wolverton, one of you, between The Pacific Ma-
chinery Company, a corporation, Plaintiff and De-
fendant in Error, and F. T. Meyer, Defendant and

Plaintiff in Error, a manifest error hath happened to the great damage of the said Plaintiff in Error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

Witness the HONORABLE EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States, this 14th day of November, 1916.

(Seal)

G. H. MARSH,

Clerk of the District Court of the United States for the District of Oregon.

Service of the foregoing Writ of Error made this 14th day of November, 1916, upon the District Court of the United States for the District of Oregon, by

filing with me as Clerk of said Court a duly certified copy of said Writ of Error.

G. H. MARSH,
Clerk, United States District Court,
District of Oregon.

Filed November 14, 1916.

G. H. MARSH,
Clerk, United States District Court,
District of Oregon.

*In the District Court of the United States for the
District of Oregon.*

NOVEMBER TERM, 1913.

Be it remembered, that on the 3rd day of November, 1913, there was duly filed in the District Court of the United States for the District of Oregon, an Amended Complaint, in words and figures as follows, to-wit:

*In the District Court of the United States for the
District of Oregon.*

THE PACIFIC MACHINERY COMPANY, a corporation, Plaintiff,

vs.

F. T. MEYER, Defendant,

No. 5698.

AMENDED COMPLAINT.

Comes now the plaintiff, and having obtained leave of Court therefor, files this its Amended Com-

plaint herein, and for cause of action against the defendant alleges as follows, to-wit:

I.

That the plaintiff now is, and at all times herein mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of Washington, and a citizen and resident thereof, having its office and principal place of business at the City of Seattle, in said State of Washington.

II.

That the defendant, F. T. Meyer, now is, and at all times herein mentioned has been, a citizen and resident of Oregon, residing at Oregon City, Clackamas County, in said State of Oregon.

III.

That the plaintiff now is, and at all times herein mentioned has been, the owner of and lawfully entitled to the possession of all of that certain personal property situate, lying and being in the mill formerly occupied and operated by the Oregon City Lumber Company at Oregon City, in Clackamas County, State of Oregon; and which machinery is more particularly described and itemized in the schedule hereto annexed and marked Exhibit "A," and made a part of this complaint.

IV.

That on or about April 29th, 1909, plaintiff delivered said personal property to The Oregon City

Lumber and Manufacturing Company, a corporation, under a certain contract or letter in writing, accepted by said The Oregon City Lumber and Manufacturing Company, by the terms of which contract the title to said personal property remained in the plaintiff until the full performance of the terms and conditions of said contract to be performed by The Oregon City Lumber and Manufacturing Company and the payment of the amount of the purchase price thereof, and that in case said The Oregon City Lumber and Manufacturing Company failed to perform the terms and conditions of said contract, or failed to make the payments provided to be made by said The Oregon City Lumber and Manufacturing Company, said contract should become void at the election of the plaintiff, and said property immediately returned to the plaintiff.

V.

That The Oregon City Lumber and Manufacturing Company failed to perform the terms and conditions of said contract, and failed to pay to the plaintiff the purchase price provided for therein, or any part thereof; that the plaintiff has elected to declare said contract void and has given notice thereof to The Oregon City Lumber and Manufacturing Company; that The Oregon City Lumber and Manufacturing Company on or about November 10th, 1909, made an assignment for the benefit of creditors to John J. Cooke and John W. Moffitt; that said John J. Cooke and John W. Moffitt, as

assignees of said company, on April 20, 1911, assumed to sell all of the property of said company, including the property above described, to the defendant, F. T. Meyer, and placed said defendant in possession thereof; that said defendant was informed, and had notice that said contract between the plaintiff and The Oregon City Lumber and Manufacturing Company had been declared void, and had notice and was informed that the plaintiff was the owner of said property.

VI.

That the value of said property is, and at all times herein mentioned was, the sum of Seventy-two Hundred Dollars.

VII.

That the plaintiff has demanded possession of said personal property from the defendant, but defendant unjustly detains the same to the damage of the plaintiff in the sum of Seventy-two Hundred Dollars.

Wherefore, the plaintiff demands judgment against the defendant for the recovery of the possession of said personal property, or for the sum of Seventy-two Hundred Dollars, the value thereof, in case delivery cannot be had, together with interest thereon from the date of the institution of this action.

IRA BRONSON,
Attorney for Plaintiff.

State of Washington, }
County of King. } ss.

JOSEPH HEWITT, being first duly sworn, on oath deposes and says: That he is the assistant secretary of The Pacific Machinery Company, a corporation, plaintiff in the above entitled action; that he has read the foregoing amended complaint, knows the contents thereof and believes the same to be true.

JOSEPH HEWITT,

Subscribed and sworn to before me this 31st day of October, 1913.

(Seal)

W. L. GRILL,

Notary Public in and for the State of Washington, residing at Seattle.

EXHIBIT "A."

- 1 11x14 Beck Type Engine Feed.
- 1 No. 4 A Mitts & Merrill Hog or Edging Grinder complete.
- 1 5 H. P. Sterling Vertical Engine complete with all regular trimmings.
- 1 Combination Lath Mill and Bolter with a capacity of 40 to 45 M. Bartlett & Company make. Including six saws.
- 1 Combination Lath Binder and Trimmer complete except saws.
- 1 Prescott 14 Saw Under Cut Trimmer complete with all necessary iron work and all necessary wood work and 476' of table chains.

- 1 Heavy Pacific Coast Type Slab Slasher for 7
saws spaced 4' 1" centers. Including heavy
drive rig.
- 1 5 Tooth Expansion Sprocket Wheel for $\frac{7}{8}$ x6
Long Length Conveyor Chain fitted to above
shaft.
- 1 Spur Gear 63 teeth, $1\frac{1}{2}$ " pitch, 4" face, bore
2 $\frac{15}{16}$ " key seated and fitted.
- 1 Shaft 2 $\frac{7}{16}$ "x5' 3" key seated.
- 1 Spur Pinion 13 teeth, $1\frac{1}{2}$ " pitch, bore 2 $\frac{7}{16}$ "
key seated and fitted.
- 1 3x8x2 $\frac{7}{16}$ " Bevel Iron Friction Wheel key
seated and fitted.
- 1 Shaft 2 $\frac{7}{16}$ "x11' 6" keyseated and fitted.
- 1 12x9x2 $\frac{7}{16}$ " Bevel Paper Friction Wheel key-
seated and fitted.
- 1 2 & 016"x4".
- 2 20x20 double cut end conveyor drum keyseated
and fitted.
200' of $\frac{7}{8}$ genuine eastern made hand, hand
welded, tested and warranted, long length con-
veyor chain, made of double refined iron.
- 1 Shaft 1 $\frac{15}{16}$ x4' 6" keyseated.
- 3 15 Tooth Sprocket Wheels for No. 78 Riveted
Chain, keyseated and fitted.
30' of $\frac{1}{4}$ "x3 $\frac{1}{2}$ " Plat Iron with $\frac{1}{4}$ " screw holes.
- 2 Sprockets 15 Tooth No. 78 Fitted—2 Shaft
1 $\frac{7}{16}$ x12".
- 1 Shaft 1 $\frac{15}{16}$ x7' keyseated and fitted.
- 1 Spur Paper Friction Wheel 6"x7x $\frac{15}{16}$ " key-
seated and fitted.

- 1 Shaft 2 7/16"x2' 6" keyseated.
- 3 15 Tooth No. 78 Chain Sprockets, bore 2 7/16" keyseated and fitted.
- 1 Shaft 2 7/16"x5' keyseated.
- 1 1 15/16" Eccentric Bos.
- 1 36x6x2 7/16 Spur Iron Friction Wheel keyseated and fitted.
- 1 Shaft 2 7/16"x3' 6" keyseated.
- 1 9 Tooth Sprocket Wheel for No. 104 Chain, bore 2 7/16".
- 1 Bevel Gear 55 Teeth 1 1/4" pitch, 3 3/4 face, bore 2 7/16 keyseated and fitted.
- 1 Shaft 1 15/16"x6' keyseated.
- 1 Bevel Pinion 14 teeth, 1 1/4" pitch, 3 3/4 face, bore 1 15/16" keyseated and fitted.
- 1 Shaft 1 15/16x3'.
- 1 9 Tooth Sprocket Wheel for No. 104 Chain, bore 1 15/16" keyseated and fitted.
- 1 Shaft 2 7/16"x4' keyseated.
- 1 9 Tooth Sprocket Wheel for No. 104 Chain, bore 2x7/16" keyseated and fitted.
- 1 Spur Gear 60 tooth 1 1/4" pitch, 3 1/4 face, bore 1 15/16" keyseated and fitted.
- 1 Spur Pinion 15 tooth, 1 1/4" pitch, 2 1/4 face, bore 1 15/16" pitch keyseated and fitted.
- 1 Shaft 1 15/16x5' keyseated.
- 2 9 Tooth Sprockets for No. 104 Chain, bore 1 15/16" keyseated and fitted.
- 1 Shaft 2 7/16"x4' keyseated.
- 1 9 Tooth Sprocket Wheel for No. 104 Chain, bore 2 7/16, keyseated and fitted.

- 1 Spur Gear, 60 tooth, $1\frac{1}{4}$ " pitch, 3" face, bore $2\frac{7}{16}$ " keyseated and fitted.
- 1 Shaft 1 $1\frac{5}{16}$ "x4' keyseated.
- 1 Spur Pinion 15 tooth, $1\frac{1}{4}$ " pitch, $3\frac{1}{4}$ " face, bore $1\frac{15}{16}$ ", keyseated and fitted.
- 1 9 Tooth Sprocket Wheel for No. 104 Chain, bore $1\frac{15}{16}$ " keyseated and fitted.
- 1 Shaft $2\frac{7}{16}$ "x8' keyseated.
- 1 12x8x2 $\frac{7}{16}$ " Spur Paper Friction, keyseated and fitted.
- 1 Spur Gear 60 tooth $1\frac{1}{4}$ " pitch, 3" face, bore $2\frac{7}{16}$ " keyseated and fitted.
- 1 Shaft $2\frac{7}{16}$ "x7' 8" keyseated.
- 1 Spur Pinion 15 tooth $1\frac{1}{4}$ " pitch, $3\frac{1}{2}$ " face, bore $2\frac{7}{16}$ " keyseated and fitted.
- 1 24x6x1 $\frac{15}{16}$ " Spur Iron Friction Wheel keyseated and fitted.
- 1 Shaft 1 $\frac{15}{16}$ "x7' 8" keyseated.
- 1 8x7x1 $\frac{15}{16}$ " Spur Paper Friction keyseated and fitted.
- 1 16x6x1 $\frac{15}{16}$ " Phillips Steel Pressed Pulley keyseated and fitted.
- 1 1 $\frac{15}{16}$ " Eccentric Box.
- 1 80' of 2 $\frac{15}{16}$ " shaft in four lengths coupled together with three pair of 2 $\frac{15}{16}$ " safety flange couplings.
- 2 Shafts $2\frac{7}{16}$ "x20' coupled together with one pair of $2\frac{7}{16}$ " safety flange couplings, and coupled to above length of 2 $\frac{15}{16}$ " shaft with 1 $\frac{15}{16}$ "x $2\frac{7}{16}$ " reducing safety flange coupling.

- 1 36" Sprocket Wheel for No. 124 Chain keyseated and fitted.
- 3 Bevel Pinions, 14 tooth, $1\frac{1}{4}$ " pitch, $3\frac{3}{4}$ " face, bore $2\frac{7}{16}$ ", keyseated and fitted.
- 3 Shafts $2\frac{7}{16}$ "x5' keyseated.
- 3 Bevel Gears 55 teeth, $1\frac{1}{4}$ " pitch, $3\frac{3}{4}$ " face, bore $2\frac{7}{16}$ ". Keyseated and fitted.
- 3 Shafts $1\frac{15}{16}$ "x16' keyseated.
- 6 12 Tooth Sprocket Wheel for No. 74, bore $1\frac{15}{16}$ ". Keyseated and fitted.
- 3 12 Tooth Sprocket Wheels for No. 74 Chain, bore $1\frac{15}{16}$ " keyseated and fitted.
- 1 12 Tooth Sprocket Wheel for No. 78 Chain, bore $1\frac{7}{16}$ " keyseated and fitted.
- 3 12 Tooth Sprocket Wheel for No. 78 Chain, bore $1\frac{7}{16}$ ", keyseated.
- 1 Shaft $2\frac{7}{16}$ "x7' 6" keyseated.
- 1 36 "x8"x $2\frac{7}{16}$ " spur iron friction wheel keyseated and fitted.
- 1 12 Tooth Sprocket Wheel for No. 124 Chain, bore $2\frac{7}{16}$ " keyseated and fitted.
- 1 10 Tooth Sprocket Wheel for No. 78 Riveted Chain keyseated and fitted.
- 1 Pacific Coast Standard Wood Saw Machine, for cutting 4' slabs into 16" lengths.
 $200'$ of No. Chain.
 $180'$ of No. 104 and C. Chain.
 $320'$ of No. 104 and C. Chain.
 $40'$ of No. 124 Chain.
 $900'$ of No. 74 Chain.
 $90'$ of No. 78 Chain (Sec. 24).

90' of No. 104 and C. Chain (Sec. 37).

3000' of No. 74 Chain with "n" attachment every third link (Slasher).

25' of No. Riveted Chain.

1 Shaft 2 7/16x2' keyseated.

1 Spur Gear 24x3 keyseated and fitted.

1 9 Tooth No. 104 Sprocket bore 2 7/16 keyseated and fitted.

1 Shaft 1 15/16x3' 6".

1 Spur Pinion 12 Tooth, 1 1/4" pitch, 3 1/4 face, keyseated and fitted.

1 Sprocket 9 Tooth No. 104 bore 1 15/16.

13 2 7/16 flat boxes.

30 1 15/16 flat boxes.

2 2 15/16 flat boxes.

4 2 3/16 flat boxes.

4 3 15/16 flat boxes.

1 1 15/16 eccentric box.

2 2 7/16 eccentric box.

15 1 15/16 set collars.

14 2 7/16 set collars.

4 2 15/16 set collars.

2 2 3/16 set collars.

3 3 5/16 set collars.

10 2 7/16 flat boxes.

4 2 15/16 flat boxes.

22 2 7/16 set collars.

1 shaft 2 7/16x22'.

3 12T No. 78 sprockets.

1 36x8 double friction.

1 1 15/16x11' 8" shaft K. S.

- 1 10x9 bevel paper friction Ftd.
- 1 18x8x1 15/16 C. I. pulley.
- 1 16x6x1 15/16 C. I. pulley.
- 1 1 15/16x5' 6" shaft K. S.
- 1 bevel gear 9 1/16x3 1/4 1 15/16 ftd.
- 1 20x6x1 15/16 C. I. pulley.
- 1 9T No. 74 sprocket 1 15/16 ftd.
- 1 1 15/16x5' shaft K. S.
- 1 No. e301 double pinion ftd.
- 1 24x6x1 15/16 C. I. pulley.
- 1 3 15/16x16' 6" shaft K. S.
- 1 Pr. No. 1474 double mortise gears ftd.
- 1 1 15/16x3' K. S.
- 1 9T No. 104 Sprocket 1 15/16 ftd.
- 1 shaft 2 7/16x24 K. S.
- 2 15T 78 sprockets 2 5/16 ftd.
- 1 12T No. 98 sprocket 2 7/16 ftd.
- 1 bevel gear 32x5 ftd. 2 7/16.
- 1 shaft 1 15/16x6' K. S.
- 1 bevel pinion 7 7/8x5 1 15/16 ftd.
- 1 shaft 2 7/16x3' 6" 1 end turned to 2 3/16.
- 1 sprocket 13T No. 87 2 7/16 ftd.
- 1 24x6x1 15/16 C. I. pulley.
- 1 shaft 2 7/16x3' 8" K. S. end turned to 2 3/16.
- 1 sprocket 9T No. 104 ftd.
- 1 shaft 3 7/16x6' 3" K. S.
- 1 shaft 3 15/17x12' 8" K. S.
- 1 Pr. 3 15/16x3' 7" clutch couplings ftd.
- 1 shaft 3 15/16x14'.
- 1 Pr. 3 15/16 flange shaft coupling ftd.
- 5 2 3/16 flat boxes.

27 2 7/16 flat boxes.

1 1 15/16 shifter hub and fork.

1 26x1 15/16 S. S. pulley.

1 26x6x1 15/16 S. S. pulley.

1 24x8x2 7/16 S. S. pulley.

1 8x4x2 7/16 W. S. pulley.

1 30x8x2 7/16 S. S. pulley.

1 2 7/16 shifter hub and fork.

1 36x6x1 15/16 S. S. pulley.

1 36x4x1 15/16 S. S. pulley.

1 1 15/16x3' shaft.

1 20x4x1 15/16 S. S. pulley.

20 1 7/16 solid boxes.

1 shaft 2 7/16x19' 6".

1 shaft 2 7/16x9' 6" K. S.

1 shaft 1 15/16x20' K. S.

1 shaft 1 7/16x16' K. S.

1 shaft 1 15/16x20' K. S. per sketch.

1 shaft 1 15/16x20'.

1 shaft 2 7/16x20' K. S.

1 shaft 2 7/16x16' K. S.

2 Pr. 1 15/16 couplings ftd.

1 Pr. 2 7/16 couplings ftd.

1 Pr. 3 15/16 couplings ftd.

2 shaft 2 7/16x3' 6" K. S. all except 8" on each.

1 shaft 2 7/16x6' 7" K. S. all except 8" on each.

1 shaft 2 7/16x3' K. S. all except 8" on each.

2 shafts 2 7/16x10' K. S. all except 8" on each.

Lath machine to be furnished for an additional price of \$350.00.

1 16x6x3 15/16 W. S. pulley.

- 1 14x8x8 3 15/16 W. S. pulley.
- 1 12x8x3 15/16 W. S. pulley.
- 1 8x6x3 15/16 W. S. pulley.
- 1 12x8x2 15/16 S. S. pulley.
- 2 10x6x2 15/16 S. S. pulley.
- 1 40x8x2 7/16 S. S. pulley.
- 1 30x12x2 7/16 S. S. pulley.
- 1 26x10x2 7/16 S. S. pulley.
- 1 24x10x2 7/16 S. S. pulley.
- 2 24x8x2 7/16 S. S. pulley.
- 1 20x10x2 7/16 S. S. pulley.
- 1 18x8x2 7/16 S. S. pulley.
- 1 16x10x2 7/16 S. S. pulley.
- 1 8x6x2 7/16 W. S. pulley.
- 1 shaft 1 15/16x20.
- 1 shaft 1 15/16x11.
- 180' No. 78 riveted chain.
- 90 only 78 B attachments.
- 20' 87 riveted chain.
- 5 sheets of red friction paper.
- 2 2 7/16 set collars.
- 4' 2 7/16 wood pulley bushing.
- 1 shaft 1 15/16x7' 3" K. S.
- 1 32x8 S. S. pulley.
- 1 box 55-lb. sterling babbitted.
- 10' 74 chain N. attachments every other link.
- 1 3 15/16 flat box.
- 12 1 15/16 set collars.
- 6 2 7/16 set collars.
- 1 14x6 steel split pulley.
- 2 16x4x1 15/16 steel split pulley.

- 1 10x4x1 15/16 steel split pulley.
- 1 6x3x1 15/16 wood split pulley.
- 8 1 1/16 set collars.
- 10x1 7/16 solid boxes.
- 6 1 15/16 flat boxes.
- 5 2 7/16 flat boxes.
- 1 2 7/16 eccentric boxes.
- 1 exchange of one 6x7 1/2 sterling vertical engine
for 1-4x5 engine.

Filed November 13, 1913.

A. M. CANNON, Clerk.

And afterwards, to-wit, on the 2nd day of December, 1913, there was duly filed in said Court and cause, an Answer, in words and figures as follows, to-wit:

ANSWER.

Now comes the defendant and for answer to the Amended Complaint of plaintiff herein filed:

I.

Admits the allegations contained in Paragraph I of said Amended Complaint.

II.

Defendant admits the allegations contained in Paragraph II of said Amended Complaint.

III.

Defendant denies each and every allegation con-

tained in Paragraphs III and IV of Plaintiff's Amended Complaint.

IV.

Answering Paragraph V of Plaintiff's Amended Complaint defendant denies each and every allegation therein contained except that this defendant admits that on or about November 10th, 1909, the Oregon City Lumber & Manufacturing Company, a corporation organized and existing under the laws of the State of Oregon, as alleged in Plaintiff's Amended Complaint, made an assignment for the benefit of its creditors to John J. Cooke and John W. Moffitt, and that said John J. Cooke and John W. Moffitt, as such assignees, duly and in accordance with law, and on or about the 21st day of April, 1911, sold and delivered all said property to this defendant.

V.

Answering Paragraph VI of said Amended Complaint, this defendant denies that such property is of the value of Seventy-two Hundred Dollars (\$7200.00), or of any greater value than Fifteen Hundred Dollars (\$1500.00).

VI.

And this defendant for a further and separate answer and defense herein, alleges:

That on or about the 10th day of November, 1909, the Oregon City Lumber & Manufacturing Company was a corporation, organized and existing under the

laws of the State of Oregon, and was the legal owner and in possession in Clackamas County, Oregon, of all the property mentioned in Plaintiff's Amended Complaint; that on said 10th day of November, 1909, said corporation being in failing circumstances, made an assignment for the benefit of all its creditors to John J. Cooke and John W. Moffitt and executed in due form of law a deed of general assignment under the laws of the State of Oregon, which deed was executed and acknowledged so as to entitle it to be recorded, and was duly recorded in Book 3, page 205, Record of Deeds for Clackamas County, Oregon, where said property was situated; that said assignees duly qualified as such and accepted said trust and immediately went into possession of all said property.

That on or about the 21st day of April, 1911, said John J. Cooke and said John W. Moffitt, as such Assignees, in accordance with law duly sold all said property at public auction to the highest and best bidder for cash in United States Gold Coin; that prior to said sale, said sale was duly advertised according to law and plaintiff had due notice of said sale and of the time and place when the same was to take place, and the terms thereof, and was represented at said sale by ——— Garrett, its General Agent and Manager.

That at said sale this defendant bid in the said property and the whole thereof and became the purchaser of all said property and the same was delivered to him by said John J. Cooke and said John

W. Moffitt and defendant went into possession thereof at once and defendant has ever since remained and now is in possession of the same.

That at said sale the said plaintiff was present by its General Agent and Manager, — Garrett, and made no objection to said sale and made no claim to said property, or any part thereof, and consented to said sale.

That at such sale this defendant was the highest and best bidder and bought said property at public auction in good faith and for full value.

That neither said John J. Cooke nor John W. Moffitt nor this defendant ever had any notice or knowledge that there was any actual or pretended defect in the title to said property, or that plaintiff claimed that it had any interest in said property except as a general unsecured creditor of said Oregon City Lumber & Manufacturing Company, and this defendant alleges that he was on said April 21st, 1911, ever since has been and now is a bona fide purchaser in good faith for full value of all said property.

And this defendant alleges that plaintiff by reason of its participation in said sale and because it stood by and permitted this defendant to purchase the same at said sale in the manner and under the conditions hereinabove alleged, is and of right ought to be forever estopped to set up any claim or title to said property, or any part thereof as against this defendant, and particularly the claim set out in Plaintiff's Amended Complaint.

And this defendant further alleges that when said personal property was sold by plaintiff on said 29th day of April, 1909, it was sold for the purpose of being used in a lumber and planing mill, and plaintiff had actual knowledge that it would be used for that purpose. That upon its being delivered on said April 29th, 1909, to said Oregon City Lumber & Manufacturing Company, it was immediately, with plaintiff's knowledge, used for the purpose above set out, and a large portion of it became attached to and a part of the realty of said mill and became a fixture that could not thereafter be removed, and defendant alleges that the said personal property was attached and is a part of the realty and not subject to replevin.

Wherefore, defendant having fully answered, asks to be hence dismissed with judgment for his cost and disbursements.

DOLPH, MALLORY, SIMON & GEARIN,
Attorneys for Defendants.

State of Oregon, }
County of Clackamas. } ss.

I, F. J. Meyer, being first duly sworn, depose and say that I am the defendant in the above entitled action; that the foregoing answer is true as I verily believe.

F. J. MEYER.

Subscribed and sworn to before me this 1st day of December, 1913. .

(Seal)

E. C. LATOURETTE,

Notary Public for the State of Oregon.

Filed December 2, 1913.

A. M. CANNON, Clerk.

And afterwards, to-wit, on the 8th day of January, 1914, there was duly filed in said Court and cause, a Reply, in words and figures as follows, to-wit:

REPLY.

Comes now the Pacific Machinery Company, a corporation, plaintiff herein and for reply to answer of defendant heretofore served upon it, admits, denies and alleges as follows:

I.

Referring to paragraph six of said answer, plaintiff admits the allegations contained in the first paragraph thereof, being lines nine to twenty-two inclusive of page two of said answer.

II.

Referring to paragraph two of said paragraph six, beginning at line twenty-three of page two, plaintiff admits that property in question was sold on the 21st day of April, 1911, but alleges that it has no knowledge as to whether or not said sale was duly held in accordance with law or for cash

or to the highest bidder and therefore denies the same; and plaintiff further denies that it had due notice of, or was represented at said sale.

III.

Referring to paragraph three of said paragraph six, beginning at line thirty-one of page two of said answer, plaintiff alleges that it has no knowledge as to whether or not defendant is now in possession of the property in question and therefore denies the same.

IV.

Referring to paragraph four of said paragraph six, beginning at line four of page three of said answer, plaintiff denies that it was present at said sale or consented thereto.

V.

Referring to paragraph five of said paragraph six, beginning at line eight of page three of said answer, plaintiff alleges that it has no information as to whether or not defendant purchased said property in good faith, or for full value and therefore denies the same.

VI.

Referring to paragraph six of said paragraph six, beginning at line eleven on page three of said answer, plaintiff alleges that it has no information as to the truth or falsity of the matter therein and therefore denies the whole, and each and every part thereof.

VII.

Referring to paragraph eight of said paragraph six, beginning at line twenty-six of page three of said answer, plaintiff alleges that it has no information as to whether or not said property is attached to realty and has become a fixture and therefore denies the same.

IRA BRONSON,
Attorney for Plaintiff.

State of Washington, }
County of King. } ss.

EDWARD I. GARRETT, being first duly sworn, on oath deposes and says: That he is the secretary of the Pacific Machinery Company, a corporation, plaintiff in the above entitled action; that he has read the foregoing reply, knows the contents thereof and believes the same to be true.

EDWARD I. GARRETT.

Subscribed and sworn to before me this 29th day of December, 1913.

(Notarial Seal)

H. B. JONES,
Notary Public in and for the State of
Washington, residing at Seattle.

Filed January 8, 1914.

A. M. CANNON, Clerk.

And afterwards, to-wit, on the 14th day of August, 1916, there was duly filed in said Court and cause, an Opinion, in words and figures as follows, to-wit:

OPINION.

Bronson, Robinson & Jones, of Seattle,
Washington, for Plaintiff.

Dolph, Mallory, Simon & Gearin, of Portland,
Oregon, for Defendant.

WOLVERTON, District Judge:

On April 29, 1909, the Pacific Machinery Company, plaintiff herein, through its manager Thomas Garrett, made a proposal to the Oregon City Lumber and Manufacturing Company as follows:

"We propose to furnish you machinery in accordance with attached specifications for the sum of \$4695.00, including a 11x14 Beck type engine feed, which is not mentioned in the specifications, delivery to be made at Portland. Terms to be \$1500.00 cash on arrival of the machinery, balance to be paid in equal payments of two, three, four, and five months dating from shipment of machinery. Transaction is to be covered by machinery contract, with notes on deferred payments bearing interest at 8%, notes to be endorsed by the company as well as by your Mr. Bohm and Mr. Collins, personally."

I call the paper a proposal for convenience, without assuming at this juncture to determine its legal effect.

In pursuance of the understanding thus had the Machinery Company furnished and delivered to the Lumber Company a large amount of sawmill machinery. The delivery began soon after the signing of the paper, and continued from time to time for the space of three or four months. The Lumber Company was not successful in its venture, and on October 28, 1909, made an assignment to John J. Cooke and J. W. Moffitt, as trustees, to sell the property and pay the creditors of the assignor. The deed of assignment carried with it whatever interest the assignor had in the mill machinery and supplies the Machinery Company had theretofore delivered to the Lumber Company in pursuance of the aforesaid proposal. Later, sale of the mill, including the machinery in question, a large amount of other machinery, and the lease of the premises upon which the mill was constructed, was advertised by the trustees. At the appointed time, or rather at a postponed date, the mill and lease were sold to the highest bidder, and bid in by the defendant F. T. Meyer, who now claims to be the owner of the whole. The plaintiff sues in replevin to recover the bulk of the machinery delivered by it to the Lumber Company, on the hypothesis that title never passed to the Lumber Company, but remained with the Machinery Company, and that such was the intent and legal effect of the transactions had between the parties with reference to such machinery.

The cause was tried by the court without the intervention of a jury.

But two witnesses testified respecting the understanding of the parties at the time the proposal was signed and accepted. These were Thomas Garrett, manager of the Machinery Company, and William G. Bohn, president of the Lumber Company. Garrett says that there was a direct understanding that the sale was to be conditional, the vendor reserving title until the conditions were complied with. Bohn declares that it was not to be conditional, but absolute. Collins, who was present and participated in the negotiations, was not called as a witness. So that so far, the testimony of one witness stands against that of another.

Later, namely, on July 23, 1909, a conditional contract was presented to Bohn for execution on behalf of his company, together with a statement of account, with demand for the payment of that part of the purchase price then claimed to be due. Both the payment demanded and the signing of the conditional agreement were refused. Bohn says he objected to the payment because he thought his company was entitled to a discount for delay in shipping and certain changes made in the machinery delivered; and as to the proffered contract, he declares that he simply repudiated it as being a thing not agreed to.

In my view, the question whether title passed depends principally upon a proper construction of the paper which I have called a proposal.

It is at once manifest that the contract, if it can be so termed, was not intended to be the final word of the parties covering the transaction. It contains no terms of present sale, but a proposal to furnish machinery with delivery at Portland. Then follows the terms of payment. \$1500 was to be paid in cash on arrival of the machinery. What was meant to be the place of arrival is somewhat obscure; probably Portland, as delivery was to be made at that place. The balance was to be paid in three installments, dating from shipment of machinery, the transaction to be finally covered by machinery contract, with notes on deferred payments. What was to be the nature of the machinery contract, whether a conditional sale contract or not, the paper does not disclose. But without the covering of the transaction by the machinery contract, it is plain the contract contemplated was not completed, whatever might have been in the minds of the parties as to the conditions to be contained therein.

It is in evidence, and not contradicted, that, although the machinery was furnished and delivery made to the Lumber Company, no cash consideration passed except \$100, nor were any notes executed, nor was the transaction covered by machinery contract, be that what it may.

Now, under such a tentative arrangement, can it be that a sale of the machinery was effected, and that the title passed out of the Machinery Company? Without appropriate words of sale, and

with specific reservation for covering the transaction by another and definite and final contract, the paper discloses no intendment of a present sale. This, coupled with the further condition of a cash payment to precede the execution of the notes for deferred payments and the closing of the transaction by a final contract, is strongly persuasive of a purpose not to pass title at the time, but to reserve it until the condition of a cash payment was met and a formal transfer made by machinery contract. This interpretation is borne out by *Lundberg v. Kitsap County Bank*, 139 Pac. 769, a case of marked analogy to the present.

The conclusion having been reached that no title passed to the Lumber Company by the transaction, the defendant could acquire no title from or through it. Nor do I think the plaintiff is estopped from controverting defendant's alleged title by the conduct of its officers and counsel respecting the trustee's sale. The sale was conducted through notice and request for sealed bids, and the Machinery Company had no opportunity to previously notify the purchaser of its claim of title, nor was it required so to do.

Another contention is that the machinery became attached to and a part of the real estate, therefore the contract should have been recorded in the county clerk's office. But where no sale was intended, the inference is that there was no assent on the part of the vendor that the machinery should become a part of the realty. However this may be,

the manner in which the machinery was attached to the mill frame excludes the notion that it became part of the realty. *Landigan v. Mayer*, 51 Pac. 649.

The plaintiff is entitled to a verdict.

Filed August 14. 1916.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 19th day of September, 1916, there was duly filed in said Court and cause, the Findings of the Court, in words and figures as follows, to-wit:

FINDINGS.

Bronson, Robinson & Jones for Plaintiff.

Dolph, Mallory, Simon & Gearin for Defendant.

Wolverton, District Judge:

The Court for verdict finds that the plaintiff is the owner and entitled to the possession of all the property described in plaintiff's complaint, except the last nine items on page 6 of the schedule attached thereto and all the items on pages 7 and 8 of such schedule save the last, and that the value thereof is \$1243.50.

CHAS. E. WOLVERTON, Judge.

Filed, September 19, 1916.

G. H. MARSH, Clerk.

And afterwards, to-wit, on Monday, the 16th day of October, 1916, the same being the 90th Judicial day of the Regular July, 1916, Term of said Court; Present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

JUDGMENT.

This matter coming on regularly for hearing upon plaintiff's amended complaint, defendant's answer, and plaintiff's reply thereto, upon the 4th day of January, 1916, the plaintiff appearing by its attorneys, Bronson, Robinson & Jones, and the defendant appearing by his attorneys, Dolph, Malory, Simon & Gearin, and evidence having been introduced, and the cause having then been continued until April 27, 1916, at which time further evidence was introduced, and the case having then been submitted to the court on written briefs, and the court having upon the 14th day of August, 1916, found as a verdict in the case that the plaintiff is the owner and entitled to possession of all of the property herein sued for, except the nine last items on page six of the schedule attached to its complaint and amended complaint, and all the items on pages seven and eight of said schedule, save the last, the same being the articles hereinafter referred to, and that said articles are of the value of Forty-two Hundred Forty-three and 50/100 (\$4243.50) Dollars; and the court having heretofore signed and

entered a judgment as prepared by the plaintiff, which does not with sufficient certainty identify the property to be recovered by the plaintiff, and whereas, the plaintiff and defendant have agreed to this amended form of entry of judgment for the purpose of more particularly identifying said machinery, which judgment shall operate to correct and supersede said former entry;

NOW, THEREFORE, it is ORDERED, ADJUDGED and DECREED, that the plaintiff have and recover of and from the defendant the possession of all of the property sued for in this action, to-wit: all the property described in plaintiff's complaint, except the last nine items on page 6 of the schedule attached thereto and all the items on pages 7 and 8 of such schedule save the last, or that in the event that possession thereof be refused or not delivered, that the plaintiff have judgment against the defendant for the sum of Forty-two Hundred Forty-three and 50/100. (\$4243.50) Dollars, with interest thereon at the rate of six per cent per annum from the 19th day of September, 1916, and that the plaintiff recover its costs herein to be taxed.

Done in open Court this 16th day of October, 1916.

CHAS. E. WOLVERTON,
Judge.

Filed October 16, 1916.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 9th day of November, 1916, there was duly filed in said Court and cause, a Bill of Exceptions, in words and figures as follows, to-wit:

BILL OF EXCEPTIONS.

Be it remembered that this cause came on regularly for trial in the above entitled Court, on the 4th day of January, 1916, and was continued and completed on the 27th day of April, 1916. The plaintiff appeared by its attorneys, H. B. Jones and Ira Bronson, the defendant by his attorneys, Dolph, Mallory, Simon & Gearin, the trial being before the Court, and the parties waiving a jury, and the following proceedings were had, to-wit:

It was stipulated between counsel that the description of the property sued for in the original complaint was the correct description and should be considered as applying to the amended complaint.

Without objection, the defendant was permitted to amend his answer to make it read that all of the property involved in the action became attached to and a part of the realty.

It was further stated by counsel for the plaintiff that plaintiff would not claim in this suit the following articles itemized in the list accompanying the original complaint, towit: commencing on line 28, page 6, of said list, continuing through the rest of that page, all on page 7, all on page 8, down to line 11, but not including the last item.

Testimony was offered on the part of the plain-

tiff tending to show that at the time that the Oregon City Lumber & Manufacturing Company entered into the agreement with the plaintiff to purchase the personal property for the possession of which this action was brought, the following letter (Plaintiff's Exhibit "A") was written to the Oregon City Lumber & Manufacturing Company by the plaintiff and accepted by said Oregon City Lumber & Manufacturing Co.:

"Portland, Oregon, April 29, 1909.
Oregon City Lumber & Mfg. Co.,
Oregon City, Oregon.

Gentlemen:

We propose to furnish you machinery in accordance with attached specifications for the sum of \$4695.00, including a 11x14 Beck type engine feed, which is not mentioned in the specifications, delivery to be made at Portland. Terms to be \$1500.00 cash on arrival of the machinery, balance to be paid in equal payments of two, three, four and five months dating from shipment of machinery. Transaction to be covered by machinery contract, with notes on deferred payments bearing interest at 8%, notes to be endorsed by the company as well as by your Mr. Bohn and Mr. Collins, personally.

Yours truly,

PACIFIC MACHINERY COMPANY,

Accepted:

Thos. Garrett, Mgr.

Oregon City Lumber & Manfg. Co.

By Wm. G. Bohn, Prest.

George W. Collins."

Edward I. Garrett, called as a witness on behalf of the plaintiff testified that for 21 years he had been engaged in the machinery business, that he was connected with the Pacific Machinery Co. at the time when the sale of the property herein involved was made to the Oregon City Lumber & Manufacturing Co., that he was familiar with the method of sale of machinery which is sold to Saw Mills and Lumber Mills on time, and that he was familiar with the use of the phrase "machinery contract." He was then asked by plaintiff's counsel the following question:

What is the significance of that phrase as used in the trade?

To this question the defendant then and there objected on the ground that it was incompetent and immaterial, which objection the Court overruled and to the said ruling duly allowed the defendant an exception.

Thereupon the witness answered:

It is a general term that is commonly used in the sale of machinery, whereby the vendor intends to retain title until the machinery is paid for.

Counsel for the plaintiff then asked the witness the following question:

How does it compare with the phrases "conditional sale?"

To which question the defendant then and there objected on the ground that it was incompetent and immaterial, which objection was overruled by the Court and an exception duly allowed the defendant.

The witness then answered:

Synonymous.

The foregoing is all the testimony in the case upon the trade significance of the phrase "machinery contract" and is set forth for the purpose of illustrating the above exceptions.

Here follows a transcript of all the testimony given at the trial, the same being set forth in full to enable the Appellate Court to determine the correctness of the trial Court's rulings in refusing to make and find certain Findings of Fact and Conclusions of Law proposed by the defendant and in finding a general verdict and judgment in favor of the plaintiff.

Thomas S. Garrett, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Jones:

Mr. Garrett, during the year 1909 did you have any connection with the Pacific Machinery Depot?

A. Yes, I was acting as their agent here.

Q. Whereabouts were you stationed?

A. At Portland.

Q. Here at Portland?

A. Yes.

Q. During that year did you have any dealings

(Testimony of Thomas S. Garrett.)

with the Oregon City Lumber & Manufacturing Company?

A. Yes, I did.

Q. What were they proposing to do at that time?

A. They were remodeling a sawmill, adding additional machinery equipment.

Q. Did they invite proposals from your house to furnish them certain of that machinery?

A. Yes, we figured with them on furnishing them the machinery?

Q. And did you finally enter into an arrangement with them to furnish some of it?

A. Yes, I did.

Q. And did furnish some of it?

A. Yes, I did.

Q. Will you examine that list, Mr. Garrett, and state whether or not you can say whether or not that property was furnished?

A. Yes, I can identify this as a list of the machinery which we furnished.

Q. That you furnished?

A. Yes.

Q. Now, with whom did you deal as representing the Oregon City Lumber & Manufacturing Company in this transaction?

A. With Mr. Bohn and Mr. Collins originally.

Q. What positions did they occupy?

A. Mr. Bohn was president of the company. Mr. Collins held some office—I don't recall what.

(Testimony of Thomas S. Garrett.)

Q. And what kind of an arrangement did you enter into with them for the furnishing of this machinery?

A. At the time of the sale, you mean?

Q. Yes, or before the machinery was furnished to them.

A. Why, in our customary way of handling such transactions, I explained to them that, as a great part of this machinery was made up specially, it would have to be sold on a contract whereby we retained the title to the machinery until it was paid for.

Q. And did they agree to that kind of an arrangement?

A. Yes. It was thoroughly talked over and agreed to.

Q. Can you identify this instrument?

A. Yes, I can identify that.

Q. What is that?

A. That is the agreement that we drew up at the time of the sale.

Q. Who signed this here?

A. That is signed by Mr. Bohm, the president of the Company, and this Mr. Collins that I speak of.

Q. And you signed it there for the Pacific Machinery Company?

A. Yes.

Q. And the specifications attached form part of the material described in that list in the complaint, do they?

(Testimony of Thomas S. Garrett.)

A. Yes, they were supposed to form a part of this contract matter.

Q. And when was this signed?

A. That was signed April 29.

Q. Well, with reference to your negotiations, was it signed before you delivered the machinery?

A. Oh, yes.

Mr. JONES: I offer this instrument that the witness has just been referring to, as Plaintiff's Exhibit "A."

Mr. GEARIN: No objection.

Marked "Plaintiff's Ex. A" and reads as follows: (This instrument has been set forth above and is therefore omitted here.)

Attached to said Exhibit "A" was the following:

"Specifications of Saw Mill Machinery for Oregon City Lbr. & Mfg. Co., Oregon City, Oregon, from Pacific Machinery Company, Portland, Oregon."

Q. Now, you stated, Mr. Garrett, that this property was to be sold with reservation of title in the vendor until it was paid for?

Mr. GEARIN: Now, Mr. Jones, this is before the court, and I don't want to be objecting, but don't lead him like that.

Mr. JONES: I thought that was pertinent and clear.

Mr. GEARIN: He is able to take care of himself.

Q. State, Mr. Garrett, what the arrangements was as to the title. What was the arrangement under which this property was sold?

(Testimony of Thomas S. Garrett.)

Mr. GEARIN: Another thing, if the Court please, just to save the record. There is a written contract. That ends the discussion.

Mr. JOHNSON: Let me read this to the Court.
(Reads Exhibit "A" as set out above.)

Q. Now, was this machinery that was furnished under this contract, Mr. Garrett, of the reasonable value as stated in that agreement?

A. Yes, it was.

Q. Did that cover all of the machinery mentioned in the complaint here?

A. I didn't understand your question.

Q. Does this cover all the machinery mentioned in that complaint?

A. No, that doesn't cover. At least the price in that doesn't cover. It was understood that there would be more machinery ordered later, which was to be covered by this same contract, which they were to give us, whereby we retained the title to it. In other words, there was machinery to follow to be sold on the same basis.

Q. Can you show or tell what pages of the list in the complaint are covered by this contract, or rather by these specifications.

Mr. GEARIN: Mr. Jones, is it your understanding that that specification is correct?

Mr. JONES: Yes, it is my understanding that the specifications here is correct.

Mr. GEARIN: Very well. It may be so considered. We are not disputing these things.

(Testimony of Thomas S. Garrett.)

Mr. JONES: Except for a couple of extras, that I am cutting out.

Mr. GEARIN: I want the Court to understand we do not dispute the things. They were there.

Q. Which pages, Mr. Garrett, cover the machinery mentioned in these specifications?

A. It is of such a similar character that I have to compare it pretty carefully.

Q. Well, take your time. Compare it carefully. With counsel's permission, I will point out the first four pages here, Mr. Garrett, of this list, constitute the articles mentioned in there. If you will compare them now, and see if that is correct; see if they end the same place there.

A. Yes. The machinery mentioned here agrees with these first four pages in this.

COURT: Is that the first four pages of Exhibit "A" attached to the complaint?

Mr. JONES: To the complaint, yes, sir.

Q. Was there a change from the specifications in furnishing a trimmer?

A. Yes.

Q. What change was that, and what difference in price did it involve?

A. The details of the design in trimmer were changed, and that involved an addition of \$350 in the price.

Q. Was there a change in a small engine, Sterling engine?

(Testimony of Thomas S. Garrett.)

A. There was a small vertical engine which was changed to a larger size.

Q. And what difference in price did that involve?

A. \$45.

Q. Then the rest of the property mentioned in Exhibit "A" to the complaint was furnished in addition to the property specified in Exhibit "A" introduced in evidence?

A. Yes, it was.

Q. What was the value of that property?

A. It was \$1115.

COURT: Is that the value of all the property that is mentioned in that contract?

A. That was machinery that was specified by the customer at a later date.

Q. State how much of this machinery that you testified to first was furnished under the agreement which you mentioned awhile ago?

A. All that we have discussed so far was under the same original agreement.

Q. Now, Mr. Garrett, how long have you been in the machinery business?

A. Nearly 12 years.

Q. And are you familiar with values of this class of machinery?

A. The values?

Q. Yes.

A. Yes.

Q. Are you familiar with the result of wear and

(Testimony of Thomas S. Garrett.)

tear and the result of use of the machinery, depreciation in value?

A. Oh, yes. I have to appraise mills quite often.

Q. This suit, the record shows, I believe, was commenced in August of 1912, or about three years after the stuff was purchased. Assuming, Mr. Garrett, that this mill was quite idle during that time, can you state what would be the fair value of this machinery at the time the action was instituted, either by a depreciation, percentage, or any way of that kind?

A. A conservative estimate of the depreciation would be 30 per cent. It should have had a value of 70 per cent.

Q. Of the original selling price?

A. Of the original selling price.

Q. Property of this character placed in a mill is fastened in what manner?

A. Beg pardon?

Q. In what manner is property of this kind fastened when it is placed in a mill?

A. Practically all of it is merely held to its supports by machine bolts.

Q. Can it be detached without injury to the mill-frame or not?

A. Practically all of it—I don't know of any exceptions in this list—can be detached by merely unscrewing the nuts of the machine bolts.

Q. Would you state that all of the machinery

(Testimony of Thomas S. Garrett.)

that you have testified was furnished could be detached without injury?

A. Yes, I would say that all of it. I can't think of a single item that could not be.

Q. Explain just what you mean by a machine bolt?

A. A machine bolt is a piece of round iron, with a head on one end and a thread on the other, and the head is fastened to the foundation, and the end with the thread through it projects through the piece of machinery, and by screwing the nut on the machinery is attached to the foundation.

Q. You said to unfasten the piece of machinery, you simply unscrew the nut and take the bolt out?

A. Simply unscrew the nut and let the machinery loose.

CROSS EXAMINATION.

Questions by Mr. Gearin:

Your initials are what, Mr. Garrett?

A. T. S.

Q. There are two of you? You have a brother, haven't you?

A. Yes, I have a brother.

Q. And he is engaged in the Pacific Machinery Company, too, is he?

A. Yes.

Q. What position does he occupy?

A. President of the company.

Q. He is president, and what officer are you?

(Testimony of Thomas S. Garrett.)

A. I was their sales agent.

Q. At that time?

A. Yes.

Q. What official position have you now, if any?

A. Why, I am secretary of the company now.

Q. This company is a going concern?

A. Oh, yes; yes.

Q. It is engaged in business here and in Seattle?

A. Yes.

Q. Who negotiated the sale with the Oregon City Lumber & Manufacturing Company?

A. I did that.

Q. Did you go up and see Mr. Bohn?

A. Yes, sir.

Q. How did you come to know that they were in the market for that machinery?

A. Why, we have a system of keeping in touch with new business-clipping bureaus—besides going around to the mills; and then allied businesses we keep in touch with.

Q. It was in the ordinary course of your business that you found it out, and through no special arrangement of friendship or otherwise with these people?

A. No, sir.

Q. So that, having heard that they wanted machinery, or that they were in the market for it, you went up there and looked over the plant, did you?

A. Well, I looked over the plant. I wouldn't say that I looked over it with any great care pre-

(Testimony of Thomas S. Garrett.)

vious to the sale. That was not required, as they did their own engineering in this instance.

Q. Well, I mean you saw the place, and you knew what this machinery was to be used for?

A. Yes, sir.

Q. They were remodeling the mill, weren't they?

A. Yes, sir.

Q. And they were going to put this machinery in there in order to have a better mill?

A. Yes, sir.

Q. And who prepared these specifications—"Specifications of sawmill machinery for Oregon City Lumber & Manufacturing Co.," etc., that are attached to this contract? Do you know who prepared them?

A. I couldn't say accurately who did.

Q. Well, is it likely that you people prepared them yourselves?

A. No, sir. We didn't do the engineering in this instance.

Q. Well, is it your understanding that Mr. Bohn or Mr. Collins or some officer of the company brought them down to you?

A. Well, they either brought them down, or I called at their office, or they mailed them. In other words, we got them.

Q. You think these specifications were prepared by them?

A. Either by them or a man hired by them to do it.

(Testimony of Thomas S. Garrett.)

Q. Who did the figuring so as to determine the amount you proposed to charge them? You?

A. We have estimating clerks do the figuring; but, as a rule, where I am trying to negotiate the sale, I look them over myself, so that I no doubt did in this instance.

Q. So that the terms were agreed as to the cost price? That was satisfactory to both of you, was it?

A. As far as we could go. It is customary in building sawmills to specify a certain amount of machinery, but while it might be possible, it is very seldom that all of the machinery which they will require is specified at the same time.

Q. There are always extras?

A. Yes.

Q. Now, then, for the amount of machinery set out and described in these specifications you agreed with the Oregon City Lumber & Manufacturing Company to charge them \$4695, including this 11x14 Beck Type Engine Feed, etc., which is not in the specification? That was agreed upon?

A. Yes.

Q. And the terms were \$1500 cash.

A. The terms were in accordance with that letter.

Q. Yes. And the balance in notes, bearing eight per cent interest; and that was signed. Did they pay you the \$1500 cash?

A. I believe they did not.

Q. Did they pay you any cash?

(Testimony of Thomas S. Garrett.)

A. I believe they paid us \$100.

Q. Now, this contract bears date April 29, 1909. That is correct, is it?

A. Yes, sir.

Q. How soon after that did you begin forwarding this machinery?

A. Why, we began forwarding it almost at once.

Q. When did you get it all up there?

A. I am not prepared to say when it was all shipped.

Q. It doesn't appear by this contract when you are to ship it?

A. No.

Q. How late do you suppose it would be safe to say the last of it got up there?

A. I couldn't say offhand. They didn't furnish us the detailed specifications for all of this machinery immediately. As you can see, part of these detailed specifications were furnished at the time that the arrangements for the sale and payments were made, but they didn't furnish the—

Q. All in this was described?

A. Yes, but it was understood that there was more machinery to follow, which was to be on the same basis; and on account of their being in a hurry, or held up on the engineering, or one thing or another, they were only able to specify part of it at this time.

Q. Well, there was nothing to keep you from

(Testimony of Thomas S. Garrett.)

furnishing them the part of it that was in the specifications?

A. No, sir. I might qualify that statement when I say there was nothing to stop us. There were some few things, which I suppose come in the natural course of business, discrepancies between their specifications and blue-prints, one thing and another, which very commonly occur.

Q. This 11x14 Beck Type Engine Feed, you knew you had to furnish that?

A. Oh, yes.

Q. Now, then, it went along, and when did you next have any dealings with this Lumber Company—Oregon City Lumber Company, or with Mr. Bohn, its president? This now is April 29th, when you signed up? Now, when did you next have any dealing with them?

A. Well, I might say on April 30th. We were in constant touch with them.

Q. Well, you were by sending things back and forth?

A. They had an office here in the city. Our office was here in the city.

Q. When did you next have any arrangement with them, or dealing with reference to money—paying for this?

A. I couldn't say offhand.

Q. Oh, but sufficiently near it?

A. No, I couldn't say, because the entire question of what the terms of payment were, and the

(Testimony of Thomas S. Garrett.)

conditions, were settled at this time for all of it. And subsequent to that, I cannot say when we next tried to get them to carry out their agreement made at this time.

Q. That is what I want to find out now. When did you come to them? When did you come to them to say that "We want you to carry out this agreement," and they refused?

A. I am sorry, but I am not hardly qualified to say that. I couldn't give you that information. I don't know.

Q. Could you get anywhere near it?

A. No, I am afraid not.

Q. Did you ever, yourself, personally, have anything to do with it?

A. Well, as I say, I was a sales agent for the company, and it was not my business to follow credits through and see that conditions of contracts in regard to payment of money were followed out.

Q. Well, you probably, then, didn't have anything further to do with it, did you? Someone else did that, maybe?

A. Yes, someone else followed it up, yes. Correct.

Q. When you got this contract, and attended to the shipping of the stuff, was your business through then, and passed over into the hands of someone else?

A. It was through except for what help I could give. Theoretically it was through.

(Testimony of Thomas S. Garrett.)

Q. This contract calls for notes on deferred payments. Did you draw up those notes, or do you know anything about them?

A. I did not draw them up.

Q. That was somebody else. When did you go up to the mill in Clackamas County? There was a failure—that is admitted in your pleadings?

A. Yes, sir.

Q. And they assigned for the benefit of creditors, and that is duly admitted. Now, with reference to that, when did you go up to see them up there in Clackamas County?

A. As I say, that matter was not in my hands. I was responsible only for the selling of this machinery, and any failure or anything like that, while I might have been out there to the mill to look at the machinery, one thing and another, any collections, anything like that, were not in my hand. I cannot give you any information about it.

Q. Do you recall whether you were up there at all or not?

A. Do you want to know whether I have been to Oregon City after that? I was. I was at the mill after that.

Q. Were you there the day the bids were opened for the sale of this property?

A. No, sir, I was not.

Q. It is pleaded that — Garrett. Would that be likely to be your brother that is pleaded there, or you?

(Testimony of Thomas S. Garrett.)

A. Well, I couldn't say. I was not there.

Q. You were not there. So you don't know anything about that?

A. I know nothing about the sale of it.

Q. Do you remember seeing the notice of the sale?

A. Well, I think there is no doubt but what I had seen a notice of it.

Q. I have here a printed slip. I will ask you to look at it, and see if you recall seeing that?

A. It is probable that I did. I cannot say that I did not see that. It is probable that I did see this same notice.

Q. Are you able to say now that you did see it or not? I don't know that you did. I am just asking you.

A. I couldn't identify it exactly, but I knew that such a notice was out.

Q. You knew that there was such a notice advertising that sale?

A. Yes. I couldn't identify it as this same thing, but I know there was such a notice.

Q. So that you have now testified practically to all that you can recall as to this contract with the Oregon City Lumber & Manufacturing Company, and the terms of it, and the material that was furnished under it, have you?

A. I believe so. I have stated all that there was to it.

Q. This other stuff that is not included in the

(Testimony of Thomas S. Garrett.)

specifications attached to the contract, was furnished by their order later on, I take it, when they found they wanted it, or for some other reason?

A. This other material, the amount of which was \$1115, was material that they were unable to specify in April, because of a delay in their engineering department in making out these specifications.

Q. It was of the same general nature as this?

A. Oh, yes.

Q. And it was for the purpose of being used in that mill, and was used there?

A. Yes.

Q. You know Mr. Latourette, do you, Mr. Garrett?

A. I do.

Q. You know where his office is in Oregon City?

A. Yes, sir.

Q. Weren't you up there in his office previous to this sale, talking to him about the sale, and with reference to buying the property in at the sale?

A. In reference to buying it in?

Q. Or him, or anybody, or the sale generally?

A. Well, it is quite possible that—I have been in Mr. Latourette's office a number of times, but I didn't discuss with him then buying it in, be-

(Testimony of Thomas S. Garrett.)

cause that is something I have nothing to do with. It is out of my—

Q. What I mean, Mr. Garrett, is, you were up there, and you were interested in this property, and Mr. Latourette was interested in it, and you did have several conversations with him concerning the general situation of the property, didn't you? Is that correct?

A. I don't recall discussing the matter with Mr. Latourette, because that wasn't—I had no authority to do that.

Q. No, I am not trying to bind you by it at all; but I just want to know if you recall the conversation.

A. No, I don't recall any conversation.

RE-DIRECT EXAMINATION.

Q. Your brother, Edward I. Garrett, was down here a number of times about this matter?

A. Yes.

Q. Where is he now?

A. He is in the East at the present time.

Q. Why is he not present out here?

A. Why, he was in the East on business, and he has been ill there; he has had typhoid fever.

Q. He has been detained there by illness for several months, hasn't he, in the East?

A. Yes, sir.

(Testimony of Thomas S. Garrett.)

RE-CROSS EXAMINATION.

Q. I have here a paper which purports to be an agreement among the creditors of the Oregon City Lumber & Manufacturing Company, signed Pacific Machinery Company, by Ira Bronson, attorney. I will ask you to look at that—signed by all these different people. I will ask you if you ever saw that before, or if you know anything about it. I don't care about that, Mr. Garrett, if you don't recall it. I don't know that you do. Mr. Bronson will know all about it, but maybe you do.

A. I myself don't recall that. That would be out of my—

Excused.

Ira Bronson, called as a witness on behalf of the plaintiff, being first duly sworn testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Jones:

Mr. Bronson, what was your connection with the Pacific Machinery Company at the time of these transactions?

A. I was attorney for the company.

Q. Did you make one or more trips down here to look into this matter?

A. Yes.

(Testimony of Ira Bronson.)

Q. Did you make a trip down here before the sale by the assignees to the defendant?

A. Yes.

Q. Who was with you?

A. Mr. T. S. Garrett went down with me once to look at the records.

Q. Went down where?

A. Down to Oregon City. And Mr. Edward I. Garrett went down with me subsequently.

Q. And at either or both of those times did you have any conversation with the defendant Meyer?

A. Yes.

Q. This was before the sale, was it?

A. It was the day that the bids were to be opened, and were opened.

Q. And will you state what conversations you had with him at that time?

A. Well, the conversation followed an investigation at the hands of the trustees who had this property in hand.

COURT: Trustee or assignee?

A. The assignees, I should say; the assignees of the company; and the substance of the conversations was very largely an effort to arrive at some kind of a judgment by which we could have a peaceable claim and lien on this machinery of ours, and keep it, or by which they would take our claim over and buy it, or by which they would turn over the whole property to us—their prop-

(Testimony of Ira Bronson.)

erty and everything—to sell, if Mr. Garrett could persuade them that he was more capable, that is, had a larger experience and larger possibility in the machinery business than theirs.

Q. That proposition was to take over just this property?

A. No, take it all.

Q. Take the whole building?

A. Yes. We couldn't arrive at any result on that. I talked with Mr. Meyer; I talked with Mr. Latourette. I suppose we spent an hour or two, off and on.

Q. Did you notify Mr. Meyer or Mr. Latourette that the Pacific Machinery Company had a claim against this stuff?

A. Oh, that was what we were talking about all the while. There was no question about that. They know what our claim was. We were asserting it, and dickering with them trying to arrive at some result. And we couldn't arrive at any result, so I notified them that we should maintain our rights in that property, and take such steps legally as we could to enforce them.

Q. What rights did you claim to them, if any, that you had in this property?

A. We claimed to own this particular property that was sold under this conditional sale.

Q. Did you or Mr. E. I. Garrett, or Mr. Thomas Garrett, at any time in your presence, consent to the sale of this property by the as-

(Testimony of Ira Bronson.)

signees to the defendant, free of any claim on the part of the plaintiff?

A. No. We never consented to it in any way, shape or form. Mr. Edward I. Garrett and I were there together, were there constantly together, all during that late forenoon and early afternoon.

Q. Is there any other statement about this matter you want to make?

A. Nothing that I think of.

CROSS-EXAMINATION.

Questions by Mr. Gearin:

Mr. Bronson, you were representing at that time the Pacific Machinery Company as their attorney?

A. Yes, sir.

Q. You came down to look after it?

A. Yes, sir.

Q. You had seen this notice of the sale, hadn't you?

A. I have no doubt that I had seen it. I don't recall the language of the notice. We knew there was a sale advertised.

Q. You knew it was to take place at that time?

A. Yes, we knew all about that. I think it may be assumed that we saw that notice. I don't recall absolutely.

MR. GEARIN: I will ask to have the notice marked for the purpose of identification. I will afterwards prove it.

Marked for identification "Defendant's Ex. 1."

(Testimony of Ira Bronson.)

Q. Were you on the ground when the sale did take place?

A. We went—my recollection of it is that we went to the office of these assignees, Mr. Moffitt, and a Mr. Cooke, I think.

Q. You knew that they were the assignees under this assignment?

A. Oh, yes, yes, and that bids had been called for on this proposition, and we wanted to investigate and find out what they proposed to do, and then we wanted to talk to Mr. Latourette; and exactly whether we were present when those bids were opened, or whether the communication was made to us immediately afterwards, I don't know; but then it was either at the time or immediately afterwards that we had our first conversation with the defendant in the bank.

Q. Now, this notice, assuming it to be correct, announces that they will, on April 20, 1911, receive sealed bids, etc.; and I may say that that is correct, and will be proven. Now, you knew immediately after the bids were opened, anyhow, what the bid was, did you not?

A. I must have known. I don't recall just what it was now.

Q. You were up there for that purpose?

A. Yes, sir, certainly, we were there for that purpose. I don't mean by that purpose that we were there to buy the property. I mean we were there in connection with it, and to either arrange

(Testimony of Ira Bronson.)

with the defendant and Mr. Latourette to take over our property, or to let us deal with them, or else to notify them of our rights.

Q. Well, you were there because these trustees were proposing to deal with this property and sell it?

A. That is it exactly.

Q. You were up there to look after it?

A. Yes.

Q. And then you had a conversation with Mr. Latourette—several of them—didn't you?

A. Oh, yes, yes.

Q. Before the sale? Before these bids were opened?

A. We had no extensive conversation with Mr. Latourette, I think, until after the bids were opened. We had quite a long conversation with Mr. Latourette, if I remember right, right after lunch; but we had a little, just a little preliminary talk with him before.

Q. You didn't make any bid on anything?

A. No, sir.

Q. Now, I will show you this paper, Mr. Bronson, dated "Portland, Oregon, Dec. 9, 1909," signed "Pacific Machinery Co. By Ira Bronson, Attorney, approximately \$5724.85," and ask you to look at it, and see if you recall the circumstance of your signing it, and explain to the Court what that paper is, and why it was signed.

A. Yes. I remember fairly accurately what the

(Testimony of Ira Bronson.)

circumstances were. A Mr. Bohn, a brother of Mr. Bohn, the president of the Oregon City Lumber & Manufacturing Company—if that is the technical name of the company—came up to my office in Seattle. It seems to me it was in an evening after dinner, but it may have been in the afternoon; and said they were proposing to try and reorganize this proposition, and wanted to know whether or not we would release our claim on that machinery—in other words, turn it in, and take a position as a common creditor; and that he was going to reorganize it and put a lot of money in it, and people in Minneapolis—he had ample funds to pay off the whole business.

Q. Who was this?

A. Mr. Bohn, the brother of the Mr. Bohn the president of the company; and that it was going to be a good thing for Oregon City, of course, and all that, and they wanted to build this thing up—they were going to build a railroad. I told him that I was willing, without consulting the officers of the company to assure them that if they would do that, and get all of the creditors to join in it, to say that the Puget Sound Machinery Depot would join in the proposition,—I have not read this recently, but I see my signature there,—and that we would do what was decided in this agreement. And I told him—well, I am not absolutely positive as to what I said about when I would surrender the document, etc. I cannot recall that now. However, it was to be dependent upon his securing the consent of all of

(Testimony of Ira Bronson.)

the creditors and putting this money into the proposition, and we didn't secure all of the creditors to do it.

Q. Nothing came of this?

A. Nothing came of that at all, as far as I know.

Mr. GEARIN: We offer this in evidence.

Marked "Defendant's Exhibit 2."

Q. Now, after this sale up there—I term a sale where they opened the bids and concluded this transaction as shown by that advertisement—when did you next have any conversation with any of those people, Mr. Bronson, you representing the Pacific Machinery Company?

A. I don't recall right at this minute, Mr. Gearin, when the next one may have been. I don't now recall having any conversation with Mr. Latourette, the president, I think, of the bank. I may have had.

Q. You understood Mr. Latourette was the president of the bank up there, who had a claim against this, and that he was also the attorney representing it?

A. No. I may be mistaken, but I assumed that Mr. Latourette who was attorney was not president of the bank. I may be wrong about that.

Q. Well, it is this Latourette, anyway?

A. Well, there are two of them.

Q. I know. Did you ever have any conversation with the other one at all?

A. Yes: yes.

(Testimony of Ira Bronson.)

Q. Oh, well; now, when did you?

A. It is the other one, in the bank, that I refer to as having had the long conversation with in the afternoon.

Q. Up there?

A. Yes.

Q. This is Charles Latourette. Not this one?

A. Yes, it was the other one.

Q. So that up to the time of the sale up there you didn't have any conversation with Mr. Charles Latourette, who is here?

A. I don't recall that I did. My first conversation was with Mr. Meyer in the bank, if I remember right, when we went early in the morning. The first thing we did was to go and see Mr. Meyer.

Q. Well, now, after that, do you recall the time that you had a conversation with Mr. Charles Latourette, who is now here?

A. Oh, yes; but I think that was a long while afterwards.

Q. How long afterwards?

A. Well, that would be pretty hard for me to say. My mind might be recalled to it, but I don't recall now about it.

Q. Well, you can state the substance of the conversation, whenever it took place. It did take place?

A. The substance of that conversation was that we would like to settle this controversy, and get some kind of a proposition out of it. It would either

(Testimony of Ira Bronson.)

mean their paying us some money and taking our claim over, or agreeing to selling the property, we to waive any claim we had, and let them have the title—that is, not assert a title against them—and give us some of the proceeds, some proportion of the proceeds, on the theory that we were both creditors in this proposition. That is the substance of it. I cannot give you the words.

Q. You had one or two or several conversations with him?

A. I don't recall more than three, one of which was this forenoon.

Q. Well, I mean before this suit was brought?

A. I think two before.

Q. Before the suit was brought?

A. I wouldn't contradict Mr. Latourette if he said it was oftener than that, but I don't recall it.

Q. I guess probably you are right about it. There was nothing resulted from the conversation?

A. Nothing resulted, no. We never could get together at all.

Mr. GEARIN: I think that is all, Mr. Bronson.

A. I would like to explain one thing that is recalled to my mind, if I may refer to that instrument you had me identify, please. I just noticed I signed this claim as \$5724.86. I was, of course, acting on my own responsibility, as I said, and I assumed that the claim was of the amount as secured in the original agreement plus about \$1100. Now, whether the amount is correct or not there, I do not know.

(Testimony of Ira Bronson.)

I simply assumed that to be as near correct as my figures would justify.

A. I would like to add this to what I have testified to, that is, we discussed with the assignees our claim, and notified them before they made any sale, at this time when we were down there, what we asserted our rights to be.

Q. You discussed with Cooke and Moffitt?

A. Yes. I cannot say as to both, but with one of the two.

Q. Well, did you state to them that you had a conditional bill of sale on that property?

A. Yes.

Q. Which one did you tell that to?

A. My idea is that it was Mr. Cooke.

Q. Where? Down here?

A. Down in their office. Wait now, till I think whether it was their office. I have a picture of the office in my mind very well—across from the bank and a little further down the street.

Q. You mean, that is, in Oregon City?

A. In Oregon City, yes, certainly.

Q. You think you had the conversation with Cooke?

A. Yes, I think it was Cooke.

Q. Did you ever tell Moffitt that?

A. I am not at all sure that Moffitt was not there, but my recollection is that only one was there.

Q. Did you exhibit any conditional sale?

(Testimony of Ira Bronson.)

A. No, I don't think so.

Q. As a matter of fact you never had one?

A. We only had the agreement with them referred to.

Q. You never had an executed conditional bill of sale?

A. No, we couldn't get it.

Q. There was one prepared, and they refused to sign it?

A. They refused to sign it, or neglected to sign it. I don't know whether they refused to sign it.

Q. They didn't sign it?

A. They didn't sign it, as far as I know.

RE-DIRECT EXAMINATION.

Q. In connection with this Exhibit 2, did you receive this letter from Mr. Bohn, and send that letter back to him?

A. There is no signature on this, so I will have to read it. I see no signature at all. This is my writing on the back of it here. Yes, I remember those letters. That is, I hadn't seen them before, but that is substantially what I testified to. I recall now that that was the letter with which I transmitted the agreement which I signed, Defendant's Exhibit No. 2.

Mr. JONES: I offer this letter from Mr. Geo. W. Bohn to Ira Bronson, dated February 8, 1910, and a letter to Mr. George W. Bohn, dated November 13, 1909, as Plaintiff's Exhibit "B."

(Testimony of Ira Brönson.)

Mr. GEARIN: You remember that as a copy of the letter you sent?

A. Yes, I remember it very distinctly. I hadn't seen it—it hadn't been brought to my attention for several years, since it was written.

Mr. Jones read the letter from Mr. Bronson to Mr. Bohn, a part of Plaintiff's Exhibi "B," as follows:

"November 13, 1909.

Mr. George W. Bohn,
Seattle, Washington.

Dear Sir:

I have signed for the Pacific Machinery Company the proposed reorganization agreement as prepared by the Oregon City Lumber and Manufacturing Company, a copy of which is herewith enclosed. I desire to couple with the signature the following, to-wit:

First, That the signing of this agreement presupposes the signing of the same by substantially all of the unsecured creditors of the Oregon City Lumber and Manufacturing Company.

Second, That the stock to be issued shall be issued to all the creditors alike and upon the par value of and bona fide indebtedness against the company and that no more stock shall be issued than is sufficient to take up such indebtedness.

Third, Upon the condition that such arrangements will be made as shall practically assure the company a new lease of life for at least one year,

(Testimony of Ira Bronson.)

including the necessary funds to finance itself in the meantime.

Mr. Green and myself have assured ourselves of the wisdom of this arrangement after a long conference with you and are basing it very largely upon the hope that the other creditors will see fit to place the control of this proposition very largely in your hands. So as not to embarrass you I may suggest that this suggestion is made by ourselves of our own initiatives. In any event we are willing to leave it in that sense. If any other disposition is made of the management we should consider it only fair to ourselves to be consulted with reference thereto.

I may say in this last connection that our position with reference to our being entitled to a lien upon the machinery which we put in the mill is based upon the theory that the refusal of the mill company to give us a machinery contract such as we could file under the registry law will not be held by the courts to deprive us of the security which we would undoubtedly have lost had we failed to file such conditional sale through our own laches. We do not think that at the present time there is any necessity for starting into litigation over this question and we are perfectly content to give the concern every opportunity to get on its feet by an extension.

It is understood that our agreement involves our claim as originally proposed by ourselves subject to

(Testimony of Ira Bronson.)

the offsets absolutely agreed upon upon a conference with Mr. Bohn and Mr. Collins in Portland, approximately \$5724.86.

Very truly,
IB/R PACIFIC MACHINERY COMPANY."

The other letter forming a part of "Plaintiff's Ex. B," reads as follows:

"Feb'y 8, 1910.

Ira Bronson, Atty.,
Seattle, Wash.

Dear Sir:

Replying to yours of the 4th inst.

We expect to have the receivers discharged within the next few days, and will also make up a new inventory and send you copy.

The concern will be in the hands of the preferred stock—which stock must first receive its dividends and be entirely retired before the old stockholders (common stock) receive anything.

If the present plans are carried out, prospect for the concern is favorable, it is the only mill in Oregon City, and with the present higher market for lumber, it ought to work out.

Truly yours,

GEO. W. BOHN."

Witness excused.

William G. Bohn, called as a witness on behalf of defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Gearin:

Mr. Bohn, what is your business now?

A. Why, I am not in any business at present.

Q. During the year 1909 what was your business?

A. I was in the lumber business.

Q. Where?

A. In Portland and Oregon City.

Q. You are familiar with a corporation known as the Oregon City Lumber and Manufacturing Company, were you?

A. I am.

Q. What relation did you bear to that corporation?

A. I was the principal stockholder and president of the concern.

Q. You were president of it?

A. Yes.

Q. What property did that concern own at that time?

A. It owned the building and the machinery in the sawmill and planing mill and sash and door factory at Oregon City.

Q. Now, you may state to the Court if, during the month of April, 1909, you as president of the company had any dealings with the Pacific Ma-

(Testimony of William G. Bohn.)

chinery Company with reference to the personal property and machinery described in the complaint in this suit.

A. I did.

Q. You represented your Oregon City Lumber Company, and who represented the Machinery Company?

A. Mr. Garrett.

Q. I will ask you to look at the paper marked "Plaintiff's Exhibit A," and introduced by Mr. Garrett, and state to the Court if that is your signature, and if you and Mr. Collins signed it.

A. Yes, sir, we did.

Q. Is the date about right? Do you think that is when it was done?

A. April 29, 1909. Yes, sir, that was the date it was done.

Q. There is attached to the paper what is denominated "Specifications of Sawmill Machinery for Oregon City Lumber and Manufacturing Company," etc.?

A. Yes, sir.

Q. I will ask you to examine them, and state if you know who prepared them?

A. Why, my recollection is that this was prepared by the Pacific Machinery Company; that we furnished the plans of the mill as prepared by our millwright, and this list was prepared by the Machinery Company.

(Testimony of William G. Bohn.)

Q. Now, you were remodeling the mill, were you?

A. Why, yes, we were installing the machinery which we had taken out of another sawmill, and adding this to it to make a complete modern mill.

Q. And your millwright suggested to you, I suppose, the things that you wanted, and took it up with the Pacific Machinery Company, and they among them agreed upon this specification; is that it?

A. The millwright prepared a plan and specifications of what we wanted in the way of machinery, and that was submitted to various machinery houses for figures, and among the rest of them the Pacific Machinery Company, and this was their reply to it.

Q. You submitted that to other machinery houses?

A. Yes, sir, we did.

Q. And they bid lower than anybody else, did they?

A. Why, I presume they did.

Q. Well, with reference to the signing of this paper here, when did you send out the specifications to be figured on by the other people who bid on it?

A. Oh, it was previous to April 29th.

Q. You couldn't state how long before that?

A. Oh, it may have been thirty days before that. It took us some time to get the thing all worked out—to get the figures together.

(Testimony of William G. Bohn.)

Q. And in answer to your proposal, they sent you this letter?

A. No.

Q. Well, what then?

A. They submitted their figures to us, and then we either sent for them or we called on them—I don't remember which—and negotiated with them for the machinery.

Q. Well, that was the time, then, this letter was drawn up?

A. Yes.

Q. And signed and approved by you?

A. Yes, sir.

Q. Did they exhibit to you at that time any conditional sales-contract to be signed by you?

A. No.

Q. Did they have there any notes to be executed by you?

A. No, sir.

Q. State what they did with reference to furnishing this machinery, how soon they began to do it, and whether or not they furnished it in accordance with your understanding of the agreement?

A. Why, they were to begin furnishing it at once and continue to furnish it until it was all in there.

Q. What did they do about it?

A. Well, they were very dilatory about getting the machinery in there. Then they wrote us at different times and wanted to make changes in the

(Testimony of William G. Bohn.)

machinery, claiming that, by making those changes, it would facilitate the shipments. And we consented to making the changes. They wanted to change, as I remember it, a hog from one kind of a hog to another. Then there was a steam feed, they wanted to change that from one to another; and then there was a large beveled gear, they wanted to change that to another—beveled gear is nearly the main connecting link in the mill—and we consented to that. And by making these various changes, and our consenting to the things, we finally got most of the machinery in there, and got it set up; but it was spread out over a long period, several months, before we got it.

Q. Did it run up to October?

A. I don't know whether it did or not.

Q. Now, at the time of the signing of this paper, Mr. Bohn, did you pay any money?

A. I think I gave them a check for \$100.

Q. \$100?

A. Yes, sir.

Q. Did they make any demand at any time during the summer for more money?

A. Yes, sir, they did.

Q. What was done about that?

A. There wasn't anything done about it.

Q. You didn't pay them any more?

A. No, sir.

Q. How often did they ask you for money?

(Testimony of William G. Bohn.)

A. Why, after the first demand I guess they made repeated requests for money.

Q. Now, I want you to tell the Court when you first saw any paper purporting to be a conditional bill of sale of this stuff.

A. I have some papers in my pocket that I can refer to.

Q. All right, I wish you would do it, and tell the Court about it, when they first showed you that.

A. On July 22, 1909, is the date of this statement; but it was evidently several days after that before it was presented to us. I don't think it was presented on that day. They sent us a statement for various shipments made, for instance, contract \$4695, and some extras \$1115, to difference on a trimmer \$350, and something else \$168.54; making in all \$6328.54; and on the bottom here is a notation saying that "On May 5th/09 we received \$100. Deduct this amount from \$2035.54 that is due upon execution of this contract. In other words, get a check for \$1935.54 and the notes signed, also contract."

Q. Where did you see that first?

A. Why, it was presented to me by somebody in connection with the Machinery Company, I presume.

Q. It was by someone representing them?

A. Yes, sir.

Mr. GEARIN: We offer that in evidence.

Marked "Defendant's Exhibit 3."

(Testimony of William G. Bohn.)

Q. Now, after receiving that, what did you next receive?

A. Why, along with that, we received this contract.

Q. The same party that brought one brought the other, did they?

A. They must have both come together. This one is dated, however, one day later than that. This is dated the 23rd day of July. That was dated the 22nd, I believe.

Q. Now, Mr. Bohn, who brought you that paper, or how did you get it—the one you now hold in your hand?

A. Why, I am not certain, but I think that Mr. Garrett must have given it to us.

Q. This one that is in court?

A. Yes, sir, I think so.

Q. Or the other one?

A. No, this one here. I never saw the other one.

Q. Thomas Garrett?

A. I don't believe I ever saw the other Garrett; don't know him.

Q. You think Mr. Thomas Garrett? Somebody gave it to you, anyway?

A. Yes, sir.

Q. That was what date?

A. This is July 23rd.

Q. 1909. Up to that time had anybody ever said anything at all to you about a conditional bill of sale?

(Testimony of William G. Bohn.)

A. No.

Q. Did you agree to take a conditional bill of sale?

A. No, sir.

Q. When this was presented to you, what did you say about it?

A. Why, I just simply refused to execute it. That is all.

Q. You told him that was not the contract?

A. I didn't execute it. We didn't execute it.

Q. And then what happened about it?

A. Why, the next thing I know, Mr. Bronson here, I think, called on us and asked for a settlement of the account.

Q. When was that?

A. Oh, that was long after this. I don't know how long. But it was some time after that, anyway.

Q. Do you remember when the concern went into insolvency, when there was an assignment?

A. No, I don't know those dates. I haven't them in my mind. I objected to the payment of this account, because I thought we were entitled to a discount for delay in shipping, along with changes and other things.

Q. Well, you say you objected to the payment of the account?

A. Yes, sir.

Q. You considered, then, that you had made a contract whereby you owed this money if they had complied with their contract?

(Testimony of William G. Bohn.)

Mr. JONES: If your Honor please, I object to that.

Mr. GEARIN: I guess that is leading. This statement requires an explanation.

Q. What do you mean when you say you thought you were entitled to a rebate?

A. Will you repeat that?

Q. What do you mean when you say that you thought you were entitled to a rebate on that account?

A. Why, they delayed us in the shipment of that machinery, we thought, beyond all reason, and it was just at a critical time in the organization and starting of that business, and not getting this machinery embarrassed it very much at that time, and we thought we were entitled to a discount in their bill, and made a demand on them for a discount.

Q. That is, for a discount on the amount which you understood was owing?

A. Yes, sir.

Q. Now, I will ask you again, Mr. Bohn, did you at that time or at any time ever agree with these people to take a conditional bill of sale for that property?

A. I did not.

Q. You understood it to be an absolute sale?

A. Yes, sir.

(Testimony of William G. Bohm.)

CROSS-EXAMINATION.

Questions by Mr. Jones:

You agreed to the changes that were made in those specifications did you, consented to them?

A. I think we did.

Q. You received the stuff when it was shipped, did you?

A. Yes. What stuff was shipped was down there.

Q. Well, it was all shipped, wasn't it, subject to the changes made?

A. Well, I don't hardly think it was all shipped, but most of it was shipped.

Q. You are not now claiming any specific items that were not shipped, are you?

A. No.

Q. The reason you would not make any payment was because you claimed something for delay?

A. Yes, sir.

Q. How much do you claim for delay?

A. I think we asked \$3000 at that time.

Q. On a \$5700 shipment?

A. Yes, sir.

Q. And yet the assignees agreed, did they not, that the claim of the Puget Sound Machinery people, the balance owing it, was \$5700 and some odd dollars?

A. I don't know. I hadn't anything to do with that.

(Testimony of William G. Bohn.)

Q. Do you mean to say that you understood that this was an out and out sale?

A. Yes, sir.

Q. And yet you signed this contract, Exhibit "A," which says that this stuff was to be covered by machinery contract?

A. That is my signature there, yes, sir.

Q. During this year your company was in failing circumstances, wasn't it?

A. What time.

Q. Well, between the time of signing this contract and during the time of the delivery of the goods, but running up through the summer.

A. Well, it was along late in the summer.

Q. Did you have the money on hand with which to make these payments of the amount that was owing?

A. Why, I don't know whether we did or not. We probably were in a position to get it.

Q. Well, wasn't one of the reasons why you didn't make the payments because you didn't have the money?

A. No.

Q. Do you mean to say that you were able to pay at any time you wanted to during that time?

A. There wasn't any question about that. The question was to make a settlement.

Q. Well, but I am asking you whether you were able to pay?

(Testimony of William G. Bohn.)

A. I think at times we could have paid there without any difficulty.

Q. Did you ever offer to pay what was due after taking off what you claimed for delay?

A. I don't think so. We offered to make a settlement, but I forget just what the conditions were.

Q. Now, was there any delay in the arrival of the first machinery?

A. My recollection is, what we wanted first came last, and what we wanted last came first, and the thing was all reversed. We were unable to go on.

Q. Did you specify here what you wanted first?

A. Why, anybody that is in the business and is familiar with mill machinery knows what a man wants to start his work.

Q. Well, but did you specify in your contract what you wanted first?

A. It was talked over. He was supposed to know. It is like building a house—you cannot put the roof on first.

Q. You say you think that the Pacific Machinery Company made up those specifications?

A. I do.

Q. But you are not sure of that?

A. Well, I am pretty sure of it.

Q. What makes you so sure?

A. Because we had a millwright, and he prepared the plan, and the plans were submitted to the different machinery companies, and they prepared their bids and sent them in. I have a copy of the

(Testimony of William G. Bohn.)

specifications in my pocket that were submitted by the machinery company.

Q. By which—the other machinery company?

A. The Pacific Machinery Company.

Q. Let me see them, will you?

(Witness produces paper.)

A. This is marked here “Specifications of Saw-mill Machinery for the Oregon City Lumber & Mfg. Co. from Pacific Machinery Co., 49 First Street, Portland, Oregon.”

Mr. GEARIN: Is this one you have just taken from your pocket?

A. Yes, sir.

Q. But your millwright designated the items here that formed these specifications, did he?

A. He designated them by having a plan showing what was necessary for the construction of that mill. I don't think he made a list of it. I think he just furnished them with a plan.

Q. May I see your copy of it. Does that contain a copy of the letter of the agreement, too?

A. No, sir? There is something here that I might explain, that might help a little.

Q. You had a good many conversations with Mr. Garrett, did you, before this letter here was signed—Exhibit A?

A. Oh, I had talked with him, yes.

Q. When your millwright presented these plans from which these specifications were made, it was

(Testimony of William G. Bohn.)

understood, was it, that there would subsequently be other orders and specifications to be filled?

A. No. I was considerably disappointed in this specification and in the lists, and the way the thing finally worked out.

Q. Well, but that doesn't answer my question.

A. Yes, it does.

Q. I asked if, at the time this was signed, you had in mind that there would be other specifications of more machinery to be furnished?

A. The only thing that I expected to have in addition to this list was a lot of pulleys that we might require, and some flanges to make pulleys. I didn't think there was a whole lot of other stuff that was coming in. I supposed these specifications covered it all.

Q. Wouldn't you have been able to tell from this? You know just what you were getting from this, didn't you?

A. No, I didn't. Now, for instance, right here is one item in these specifications which says "Blue prints of working drawings of this machine will be furnished to assist in the installation." That evidently comes from the machinery house. We wouldn't have any occasion to write anything like that in a list.

Q. What reason did you give, Mr. Bohn, when that conditional sale contract was presented to you for not signing it, do you know?

A. I just simply repudiated the whole thing. It

(Testimony of William G. Bohn.)

wasn't according to my understanding of the trade and transaction.

Q. You had the machinery then, most of it, didn't you?

A. Why, they were shipping it. I don't think it was all delivered at that time.

Q. And there was then some payment due on it—\$1500 or \$2000 payment—wasn't there?

A. Well, according to that agreement there, I presume there was \$1500 that was coming to them when the machinery was delivered.

Q. And the notes were then to be signed?

A. When the stuff was delivered.

Q. And it was to covered by a machinery contract?

A. No.

Q. That is what it says here, isn't it?

A. No. Well, it says "machinery contract," the contract to be signed. No conditional contract.

Q. Where is that instrument you had here awhile ago, that you said was presented to you?

Mr. GEARIN: Which was that?

Mr. JONES: That he was asked to sign.

Q. It was the machinery contract, or the form of machinery contract referred to, wasn't it?

A. Not according to my understanding.

The two agreements about which the witnesses had been testifying were thereupon received in evidence and marked respectively "Defendant's Ex. 4" and "Defendant's Ex. 5."

(Testimony of William G. Bohn.)

A. The amount specified in this one, however, is \$3880.

Q. Where is that?

A. Down at the bottom there.

Q. Who put those figures on there, do you know?

A. That was there when we got it.

Q. Do you know who put them there?

A. I suppose Mr. Garrett did.

Q. Do you know who put them on?

A. I don't know.

Q. Mr. Bohn, when your blue-prints were drawn up for your changes, you specified different parts of the mill by section numbers, didn't you?

A. Why, I presume they did.

Q. And those section numbers started in and ran from one up to as many sections as you were going to have?

A. I presume that was given.

Q. Now, the contract or the specifications that have been introduced as Plaintiff's Exhibit "A" cover section numbers 29, 26, 28, 9, 6, 36, 40, 18 and 37. Now, all of the others that are omitted, the numbers would be other sections in the mill, wouldn't they?

A. Well, not necessarily. I don't know as they would be numbered consecutively. They might be, and they might not.

Q. Well, do you mean to say that those constitute all of the sections that were to be supplied, then?

(Testimony of William G. Bohn.)

A. Why, that was my understanding of it. You see we had a lot of machinery ourselves and we were just filling in with this machinery.

Q. If there were subsequently other sections ordered from the Puget Sound Machinery Depot, and given different section numbers from these, then your understanding would be incorrect, would it?

A. Well, it might have been additions or some changes made. They may have been designated as sections.

EXAMINATION BY THE COURT.

Q. Mr. Bohn, when you signed that original contract or letter there, it purports to be a letter containing the words "Transaction to be covered by machinery contract." Did you understand that that condition was in there when you signed the letter?

A. You mean the "machinery contract"?

Q. Yes.

A. The letter was complete there as we signed it.

Q. You understand, of course, that that condition was in the contract there?

A. Not a conditional sale, no, sir.

Q. Well, what did you understand a machinery contract was?

A. Why, I supposed it was the machinery—that they were going to make a contract based on their proposition to furnish that machinery.

Q. But not a contract with conditional terms?

(Testimony of William G. Bohn.)

A. No, sir, I didn't have any idea of that kind at all.

Q. Was there any form of contract produced for your inspection at that time?

A. No, sir, there was not.

Q. They didn't tell you what their form of contract was?

A. No, sir.

Q. Did you know anything about their forms of contract that they use generally?

A. I did not. I did not, no, sir.

Q. (Cross.) Didn't Mr. Garrett tell you that they would furnish this only with reservation of title in themselves?

A. No.

RE-DIRECT EXAMINATION.

Q. Now, Mr. Bohn, did you afterwards sign a guarantee, at their request, you and Mr. Collins?

A. My recollection is that we did, and that Mr. Collins and I signed a letter to the Pacific Machinery Company, guaranteeing the payment of this machinery.

COURT: Was that a personal guaranty?

A. Personal guaranty.

Q. How long after this first transaction?

A. Why, it was at or about the time that the contract was—

Q. With reference to the time this \$100 was paid?

(Testimony of William G. Bohn.)

A. At the same time.

Q. You paid \$100?

A. Yes, sir.

Q. And then signed a guaranty?

A. Yes, sir.

Mr. GEARIN: Have you that?

Mr. JONES: No, we haven't any knowledge. Mr. Garrett, have you knowledge of such a guaranty?

Mr. GARRETT: I think the one he refers to is the one right here.

Mr. GEARIN: Anyway, you say you haven't got it?

Mr. JONES: We haven't anything but this here.

Q. Your remembrance is you signed one, Mr. Bohn?

A. I do, yes.

Q. Were you at that time responsible financially, you and Mr. Collins?

A. Yes, sir, I was.

Q. What is the condition of that machinery now up there, with reference to being a part of the building?

A. It is part of the plant. It is in there, fastened to the other machinery, and all the machinery together makes the sawmill.

Q. And every bit of it is fastened somewhere to the walls, a part of the building?

A. Surely. It is fastened to the foundations,

(Testimony of William G. Bohn.)

and it is fastened to the wooden part, and other pieces on top of it, and one machine is fastened up to another, and it is all put in together, the way a sawmill would be constructed.

Q. And it was put in that way as fast you got it, was it?

A. As fast as we could get hold of it, yes, sir.

Mr. GEARIN: I now offer in evidence memo. of account of June 10, 1909, June 15, 1909, June 24, 1909, June 24, 1909, June 25, 1909, July 2, 1909, July 13, 1909, July 17, 1909, July 22, 1909, July 29, 1909, August 6, 1909, August 31, 1909, and September 9, 1909.

Q. I will ask you, Mr. Bohn, if you received those papers? You handed them to me.

A. Yes, sir.

Q. Did you get them in due course of mail?

A. Yes, sir.

Q. They are statements of account from the Pacific Machinery Company to the Lumber Company?

A. Invoices for material shipped.

Q. Invoices. Did the stuff come in accordance with those invoices?

A. I presume it did.

The said invoices were thereupon received in evidence and marked "Defendant's Exhibit 6."

Mr. GEARIN: I now offer in evidence letters of Pacific Machinery Company, May 13, 1909; May 19, 1909; June 4, 1909; July 20, 1909; July 22, 1909;

(Testimony of William G. Bohn.)

and January 8, 1910, all signed Pacific Machinery Company, by Thomas Garrett, Manager, and all with reference to this property as it was being furnished. They are all on the letterheads of Pacific Machinery Company.

Q. You may state, Mr. Bohn, if those letters that I have called attention to were received by you in course of mail.

A. Yes, sir.

Q. These letters you handed to me?

A. Yes, sir.

Said letters were received in evidence, marked "Defendant's Exhibit 7," and read as follows:

"Portland, Oregon, May 13, 1909.
Oregon City Lumber & Mfg. Co.,
Oregon City, Oregon.
Gentlemen:

In accordance with our telephonic conversation with your Mr. Bohn would say that trimmer which we are furnishing you will handle saws only as large as 24" diameter and we understand from your Mr. Bohn that this will be satisfactory, and we are having trimmer come forward accordingly.

Trusting that this is agreeable, we remain,

Yours truly,

PACIFIC MACHINERY COMPANY,

Thomas Garrett, Mgr."

(Testimony of William G. Bohn.)

“Portland, Oregon, May 19, 1909.

Oregon City Lumber & Mfg. Company,

Oregon City, Oregon.

Gentlemen :

Inclosed please find blue-print of drawing showing setting plan of 42" tightener frame for Beck's Patent Feed Engine.

Trusting this will be of assistance to you, we remain,

Yours truly,

PACIFIC MACHINERY COMPANY,

Thomas Garrett, Mgr."

“Portland, Ore., June 4th, 1909.

Oregon City Lumber & Mfg. Co.,

Oregon City, Ore.

Gentlemen :

On the 2nd we made shipment to you at Oregon City, by the O. C. T. Co., of 500 ft. of No. 104 & C chain; 300 ft. of No. 74 chain; 90 ft. of No. 78 chain; (13) 30 1 15/16 flat boxes, babbitted; 2 2 7/16 flat boxes, babbitted; and one 1 1 15/16 eccentric box.

This forenoon we are delivering to the O. C. T. Co. 13 2 7/16 flat boxes, babbitted; 2 2 15/16 flat boxes, babbitted; 4 2 3/16 flat boxes, babbitted; 4 3 15/16 flat boxes, babbitted; and 2 2 7/16 eccentric boxes; also 15 1 15/16 set collars; 14 2 7/16 set collars; 4 2 15/16 set collars; 14 2 7/16 set collars; 4 2 15/16 set collars; 2 2 3/16 set collars and 3 3 15/16 set collars; also 200 ft. No. 78 riveted

(Testimony of William G. Bohn.)

chain, 600 ft. No. 74 riveted chain, 25 ft. No. 82 riveted chain and 300 ft. No. 74 & n riveted chain, with rivets for same.

Trusting that this will be delivered to you promptly, we remain,

Yours very truly,

2 7/16

PACIFIC MACHINERY CO.

5 short want 9 got 4.

Thomas Garrett.

Exchange—30' of No. 73

instead of No. 78—40 ft. 124 short—

90' 104—Sect. 37."

"Portland, Ore., July 20, 1909.

Oregon City Lbr. & Mfg. Co.,

Oregon City, Ore.

Gentlemen:

With reference to the two No. 82 Sprocket Wheels furnished you by ourselves and which your Mr. Keller advised were defective, would say that the order sheet on which these sprockets were entered has in some way been mislaid, so we beg to ask that you kindly give us a memorandum of the size of the sprockets and the sections in which they were included.

Yours very truly,

PACIFIC MACHINERY CO.,

Thomas Garrett, Mgr."

(Testimony of William G. Bohn.)

“49 First St., Portland, Jan. 8th, 1910.

Oregon City Lbr. & Mfg. Co.,

Oregon City, Ore.

Gentlemen :

We wrote you under date of Septr. 1st, requesting that you return the two defective sprockets to Seattle, as we had replaced them with other sprockets. You returned to us here the 12 tooth No. 87 sprocket at the time you shipped us the boxes, but we have never received the 29 tooth No. 82 sprocket. Kindly forward this sprocket to the Puget Sound Machinery Depot, Seattle, Wn., advising us at the time shipment is made, and oblige.

Yours truly,

PACIFIC MACHINERY COMPANY,

Thos. Garrett, Mgr.”

RE-CROSS EXAMINATION.

Q. Mr. Bohn, you don't seem very positive in your recollection of a number of these things. Are you quite sure you signed an entirely independent guaranty, aside from this one that has been introduced here?

A. That is my recollection.

Q. Well, was it on the letter-head of the Puget Sound Machinery Depot?

A. I wouldn't be certain about that, but I think it was. I think it was a letter prepared by them, and we signed it.

Q. Whom was it delivered to?

(Testimony of William G. Bohn.)

A. Delivered to the Pacific Machinery Company.

Q. Who represented it?

A. The only man I ever had any transaction with was Mr. Garrett.

Q. Delivered to Mr. Thomas Garrett?

A. Yes.

Q. Where was it delivered?

A. At their place of business.

Q. At their place of business here in the city?

A. Yes, down on Front Street or First Street.

Q. When was it delivered?

A. About the time that we were negotiating for this machinery.

Q. Well, before or after?

A. It was after.

Q. Before or after April 29th?

A. It was after the order was placed.

Q. Why should you sign a guaranty when you had agreed in that contract to indorse their notes?

A. Because he asked me to sign the guaranty, and we signed it.

Q. Was it a typewritten guaranty?

A. Yes, sir.

Q. Did you keep a copy of it?

A. I did have a copy of it.

Q. Can you produce the copy?

A. I cannot.

COURT: Whom was that signed by—yourself?

A. Signed by Mr. Collins and myself.

Excused.

Defendant then offered in evidence the trust deed from the Oregon City Lumber & Manufacturing Co. to John J. Cooke and J. W. Moffitt and the same was received and marked "Defendant's Exhibit 8." It was stipulated by counsel that the trustees executed to defendant Meyer a transfer of whatever interest they had in the property in question.

Thomas S. Garrett, recalled for the plaintiff.

DIRECT EXAMINATION.

Questions by Mr. Jones:

Mr. Garrett, did you present to Mr. Bohn, the gentleman who just testified, a guaranty of this account for his signature, apart from this contract?

A. Not apart from it.

Q. This is the only thing you had him sign?

A. Yes.

Q. This Exhibit "A"?

A. Yes.

CROSS-EXAMINATION.

Questions by Mr. Gearin:

Do you recall anything about a guaranty signed by him and Collins?

A. Oh, yes. This is the one that we have here.

Q. Outside of that, Mr. Garrett?

A. No, not outside of that.

Q. Well, would it be likely to be done with your brother or some other officer of the company?

(Testimony of Thomas S. Garrett.)

A. It would not be likely, because we already had all that such a guaranty could cover.

Q. Well, Mr. Bohn testifies to having paid \$100.

A. Yes.

Q. Did he pay that to you?

A. Well, I don't know whether he mailed his check in, or whether I went out and got it, or whether I got it.

Mr. JONES: We will admit there was a payment of \$100.

Q. At the time of the payment of \$100, Mr. Garrett, he says he also signed this guaranty. Now, if you don't remember the payment of the \$100, isn't it quite likely that the other transaction took place with somebody else, too?

A. You ask if it is likely. It is not likely, because no one would want to duplicate a thing like that. We had already got all they had to offer in the way of personal guaranty, so it is not likely we would ask them to do it again.

Q. Anyway you don't recall it?

A. I don't know of any such other claim myself, I am sure.

Mr. GEARIN: All right. That is all.

Excused.

Edward I. Garrett, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

(Testimony of Edward I. Garrett.)

DIRECT EXAMINATION.

Question by Mr. Bronson:

What is your business, Mr. Garrett?

A. I am in the machinery business.

Q. How long have you been engaged in that business, up in the northwest here?

A. More than 21 years.

Q. You were connected with the Pacific Machinery Company at the time when the sale was made to the Oregon City Lumber & Manufacturing Company, which is the subject matter of this case?

A. Yes.

Q. Are you familiar, Mr. Garrett, with the method of sale of machinery which is sold to saw-mills, lumber mills, on time?

A. Yes.

Q. Are you familiar with the use of the phrase, "machinery contract"?

A. Yes.

Q. What is the significance of that phrase as used in the trade?

A. It is always used by us, and has been.

Q. But generally speaking?

A. It is a general term that is commonly used in the sale of machinery, whereby the vendor intends to retain title until the machinery is paid for.

Q. How does it compare with the phrase "conditional sale"?

A. Synonymous.

(Testimony of Edward I. Garrett.)

Q. You say it is synonymous with that term?

A. Yes.

Q. Mr. Garrett, were you down at Oregon City at the time when a sale was advertised to be made of the machinery which had been, among others, sold by the Pacific Machinery Company to the Oregon City Lumber & Manufacturing Company, by the assignees?

A. Yes, I came from Southern California especially for that purpose.

Q. With whom were you there?

A. With you.

Q. Did you have any conversation with the bank officers—Mr. Meyer and Mr. Latourette?

A. We did. You and I were in there together.

Q. Can you state whether or not, as the result of that conversation—or was there more than one conversation?

A. It is my impression that we were there a second time later, after the sale, at another date.

Q. What time did you go down there during the day?

A. We were there in the forenoon of the day of the sale.

Q. Early in the forenoon?

A. Yes, and there after lunch also.

Q. Did we have a conversation with the people in the bank and with the assignees, or one of them?

A. We had a conversation with the people in the bank, and with at least one of the assignees, and I

(Testimony of Edward I. Garrett.)

cannot say whether it was Mr. Moffitt or Mr. Cooke. I know we made a particular point of looking them up, and went to his office.

Q. And can you give very briefly the substance of the conversations that were had, so far as they might include a discussion of what rights you had or interests you had, or anything of that kind?

A. We went to Oregon City on that day, not to bid on the machinery, but to notify the assignee and whoever might buy it in that we had a claim on the machinery, that we claimed title to it until it was paid for, under our contract with the purchaser.

Q. Did you have any further object in attempting to negotiate with them about it?

A. Either at that time or later, we tried to arrange with Mr. Latourette to let us handle the sale of the entire mill property, believing that we were in closer touch with prospective mill purchasers, and that we could handle it to our mutual advantage, taking into consideration our claim on the part of the stock we furnished.

Q. I don't want to ask you a leading question, but what did you say to them in substance, Mr. Garrett? I cannot expect you to recall the words at this late day. What did you say to them in substance, as to what your relation to this machinery was?

A. You mean prior to the sale?

Q. Yes, prior to the sale.

A. That we had sold the machinery to the people

(Testimony of Edward I. Garrett.)

who owned the mill at the time of the sale, with the understanding that we were to retain title to it until it was paid for under this machinery contract, and that they had failed to carry out that part of signing the necessary contract upon the delivery of the machinery as it is customary to do, and that we still claimed right because of our original contract with them.

Q. What did they say about the propositions that were made to them, Mr. Garrett?

A. I don't remember what the assignees said at all. Mr. Latourette said that he didn't consider we had any claim. In fact, we couldn't get much satisfaction—much of a conversation with Mr. Latourette at the time.

Q. Are you familiar with the mechanical end of sawmills, machinery, etc.?

A. Yes, I am.

Q. Was any of this machinery, Mr. Garrett, so attached to this mill as to render it at all difficult to remove it?

A. None at all. All of it can be removed by simply taking off the nuts, and the bolts that attach it to the wood work.

Q. Would that in any way tend to injure the mill or the machinery?

A. Not at all. It would not injure the mill building or the framework of the mill at all.

Q. Would it necessitate taking down any of the mill building?

(Testimony of Edward I. Garrett.)

A. Not at all. We frequently do that. We are constantly removing machinery from mills under like conditions, without injury to the realty or any part of it.

Q. Are you familiar, Mr. Garrett—you are familiar with the value of the machinery, etc.?

A. I am.

Q. Are you familiar with the fair rate of depreciation on machinery?

A. I am.

Q. Do you know how long this machinery had been in this mill, approximately?

A. You mean at the time of the sale?

Q. Yes.

A. It had been in there about twenty months—from twenty to twenty-two months.

Q. Do you know what, as regards the market value of machinery, would be a fair rate of depreciation upon its considering how it had been used? Do you know, by the way, whether it had been extensively used?

A. I had been informed that the machinery was used little, if any.

Q. Did you look it over?

A. As a matter of fact, I think the mill began operation not before August. I think it went into the hands of the assignees some time in October. So even if it had run all that time, the operation would have been very little.

Q. With the knowledge of those facts, can you

(Testimony of Edward I. Garrett.)

state what would be a fair rate of depreciation as against its original value?

A. Most of the stuff could have been sold as new, with cleaning up and painting. I should think fifteen or twenty per cent depreciation would cover it fully. It would not have deteriorated that much in usefulness, but the salability of some of it would have been reduced probably that much, from a merchandising point of view.

CROSS-EXAMINATION.

Questions by Mr. Gearin:

Mr. Garrett, you have narrated now all the conversation that you had with those people?

A. Mr. Gearin, I don't know that I have related all of it. I have related all that I remember.

Q. It was substantially just as you have stated it?

A. I think so.

Q. Had you ever up to that time had any conversation with Mr. Latourette or Mr. Meyer or those assignees, or any of them?

A. Personally, none. I had been in California for several months.

Q. Do you know about what time it was you had that conversation?

Mr. BRONSON: You mean the time of the day?

Mr. GEARIN: No. The time of the year or month. What year was it?

A. It was in the spring of 1911. I came back

(Testimony of Edward I. Garrett.)

from California in April, for the purpose of being present at the time of the sale.

Q. It was in the spring of 1911?

A. Yes, sir.

Q. At the time, at all events, that this sale took place?

A. Yes.

Q. And your original transaction with the Lumber Company was in 1909, wasn't it?

A. Yes, sir.

Q. You had been advised that there was a failure up there, and an assignment for the benefit of creditors?

A. Yes.

Q. And that there was a proceeding by the assignees to transfer such title as they might have? You understood all that?

A. Yes.

Q. That is what brought you up?

A. Yes, sir.

Q. Now, Mr. Garrett, there never was any conditional sales contract signed, was there?

A. Nothing more than the agreement entered into originally, at the time the sale was made.

Q. What do you mean by the agreement?

A. It stipulated that—I would like to see the wording of that.

Q. It is that offer you are talking about? This is what you are talking about, is it not? That is Exhibit "A"?

(Testimony of Edward I. Garrett.)

A. The conditional sale feature, or the retention of title feature, was covered by our letter in which we say, "Transaction to be covered by machinery contract, with notes on deferred interest, bearing eight per cent."

Q. That is this Exhibit "A"?

A. Yes, sir.

Q. Outside of that, there never was anything signed by the Lumber Company and your company, was there?

A. No, sir, I think not.

Q. And this Exhibit, "A" is your letter to the Oregon City Lumber & Manufacturing Company, in response to their notification that they were in the market for this and similar machinery?

A. Yes, sir, I think so.

Q. You proposed by this letter to furnish them the stuff on the terms set out in here?

A. Yes.

Q. And then Mr. Bohn came down. You know Mr. Bohn?

A. No, I don't. I never met him.

Q. Did you have anything to do with the oral transactions, then?

A. No, not at all.

Q. Not a thing?

A. Not a thing.

Q. This letter your wrote, and your transaction with it ceased so far as having any dealings with anybody is concerned?

(Testimony of Edward I. Garrett.)

A. I don't think I wrote that at all.

Q. Your brother signed this?

A. Yes, he was manager of the Portland office.

Q. You recognize it as the act of your company?

A. Yes, I do.

Q. I understand you to say you had no conversation at all with these people about it?

A. No, I had none at all.

Q. Did you have until the time you went up to Oregon City, at the time of this assignee's sale?

A. I think not.

Q. So that all you really do know about it, then, is what happened up there, and the conversation you had with them, and this offer?

A. Well, I, of course, was in a general way conversant with conditions all the time.

Q. Well, I know, but personally you didn't conduct any of these negotiations?

A. Personally I had no direct negotiations with the people, up to the time we went to Oregon City.

Q. Well, now, you are Mr. E. I. Garrett, are you?

A. Yes.

Q. I will ask you if you didn't file a complaint in this court, before this suit was filed, which is sworn to by you?

Mr. BRONSON: We will admit there was a case filed.

Mr. GEARIN: I will simply offer these papers. There is no question about it, I think.

(Testimony of Edward I. Garrett.)

Mr. BRONSON: Not at all.

Mr. GEARIN: We offer the record in the suit of The Pacific Machinery Company v. Oregon City Lumber Company, et al., Judgment Roll 5205.

COURT: Very well; let it be admitted.

The same was received in evidence and marked Exhibit —.

Q. Which one of the Latourettes, if any one, did you talk to in Oregon City, do you know? Was it this gentleman here? There are two of them.

A. It was some years ago, Mr. Gearin. I am satisfied it is the gentleman with the beard.

Q. This one over here?

A. Yes, although of course I saw him not more than twice. It is five or six years ago.

Q. This is Mr. Cooke on the corner, and this is Mr. Meyer between the two Latourettes. Which one of them did you talk to?

A. I saw them just once, probably not over fifteen or twenty minutes. I cannot say which one. I am prepared to say that I saw one of the two absolutely, and possibly both of them. But it was as you understand, five years ago, and only for a few minutes.

Witness excused.

Thereupon the plaintiff rested its case.

D. C. Latourette, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Gearin:

Mr. Latourette, you live in Oregon City?

A. Yes, sir.

Q. What is your business?

A. I am a banker.

Q. Were you engaged in that business in the spring of 1911?

A. Yes, sir.

Q. Do you recall having seen Mr. Garrett in Oregon City about that time?

A. Yes, I think I do, along about the time of the sale.

Q. This gentleman that was on the stand. You recall the time that the property of the Lumber Company was sold by the receiver?

A. Yes, sir.

Q. Were you present at the sale?

A. Yes, sir.

Q. And Mr. Meyer bought it, did he?

A. Yes, sir.

Q. For the bank?

A. Yes.

Q. Did you have any conversation at that time with Mr. Garrett, in regard to the property, and the sale, and the proceeding generally? If you did, state to the Court what it was.

(Testimony of D. C. Latourette.)

A. I remember that Mr. Garrett came into my office on that day, the time the sale was to occur, and said they had come over to attend the sale. I think there was someone with him—I don't remember who it was; an attorney, I think, though, was along with him. And I think he inquired for C. D. Latourette. That is the gentleman that sits yonder, the one that had charge of that matter. But there was very little said between us in regard to the matter.

Q. Did he tell you in that conversation, Mr. Latourette, that the Pacific Machinery Company owned that property, and that the Lumber Company had only a conditional bill of sale of it?

A. To my best recollection, there was nothing said about that matter. I remember afterward, after the sale, and after—well, perhaps a week or ten days later, perhaps longer than that, C. D. Latourette had been to Portland, this city, to attend a conference between Mr. Garrett and some others, in regard to their taking over the property and paying five thousand dollars. When he came back from that sale, he said they had made some claim here that they were the owners of that property, and I remember I was very much surprised at any claim of that kind being made, because I didn't know until that time about any such claim.

Q. That was after the sale had been made to Mr. Meyer?

A. Yes, sir.

(Testimony of D. C. Latourette.)

Q. About how long after?

A. Oh, at this distance it would be hard for me to remember the length of time. Probably a week or two—two weeks. It might have been a month.

Q. Up to that time, you had never heard of that claim?

A. No, to the best of my recollection, that was the first time.

Q. When you say "C. D." there, you mean C. D. Latourette?

A. C. D. Latourette, yes.

Q. And the whole property was sold together—land and building and machinery and all, was it?

A. No land. There was a lease. The building is on leased ground. The machinery is in a building that is on leased ground. I have tried to recall that conversation. Of course, it was five or six years ago, and a great many things have occurred between that and this. I have tried to recollect that something might have been said that would put us on notice of that fact, but I cannot recall anything that would put us on notice of the fact of their ownership.

Q. Your best recollection is now, then that you didn't know anything about it?

A. Yes, sir.

CROSS-EXAMINATION.

Questions by Mr. Bronson:

Do you recall, Mr. Latourette, any of the cir-

(Testimony of D. C. Latourette.)

cumstances of the conversations that were had there? I will put it to you another way.

A. Yes, I can remember. I can remember Mr. Garrett's coming in, and inquiring about the sale, and I remember I told him that Mr. C. D. Latourette, I think, had charge of that matter; I was not paying very much attention to it.

Q. Don't you recall, Mr. Latourette, that Mr. Garrett and I tried to induce you to make some arrangements with us at that time to let us handle the sale of the property? Don't you recall that. I don't mean to handle that sale. I mean to handle the disposition of the property to be sold.

A. I think there was something said about that in my presence there. Perhaps C. D. was present.

Q. Do you remember you turned us down very abruptly, don't you—you wouldn't consider it at all.

A. No, I don't remember that. Maybe I did, but I don't remember that I turned you down abruptly.

Q. It is a long while ago, and I am seeking to refresh your memory with certain facts. I thought perhaps I might accomplish that object.

A. I know we wanted to get the money out of that property. I am very sure if you had wanted the property, you would have gotten it.

Q. In that connection, don't you remember you said, "Very well, gentlemen. You can pay us off, if you want to, and take this property?"

A. I don't remember that conversation; but I

(Testimony of D. C. Latourette.)

may have said it. Probably would have said it if you had offered to pay it off.

Q. You of course would recall this probably, that we came down there claiming to have some status, some right to deal with you, some reason.

A. You came down to attend the sale, I think I understood, that sale was coming off that morning?

Q. The sales were made by bids, weren't they?

A. Yes.

Q. We made no bid there?

A. You made no bid, as far as I recollect. I think you talked about putting in a bid, but I don't recall that you put one in.

Q. Don't you recall this conversation: That Mr. Garrett said to you, "We are in this business, Mr. Latourette. We are familiar with machinery. We can handle this machinery and get more out of it for both of us than you can."

A. No, I don't remember that.

Q. Do you remember our saying that we would sell that machinery and would pay you all of your money if you would let us handle it, before we paid ourselves anything?

A. No, I don't remember that. I don't think that was said. It might have been.

Q. You don't recall very much about the transaction? You remember you had some people in there on a real estate deal at the same time, and that this conversation took place in the back office?

A. I remember it was in the back office, but

(Testimony of D. C. Latourette.)

whether there was anybody in there about some real estate, I don't remember that. No, I don't remember that you were the attorney, or the man that was with Mr. Garrett.

Q. You don't remember me at all?

A. I remember Garrett, but I don't remember that you were the man.

Q. Mr. Garrett is a more striking looking man than I.

A. Did you have a moustache then?

A. No, I have never worn a moustache or any beard.

Mr. GEARIN: We will admit that you were the man.

Mr. BRONSON: I don't think of anything that I can recall now, to bring it any more clearly. That is all.

RE-DIRECT EXAMINATION.

Q. Mr. Latourette, counsel asked you about some conversation between you as to their proposing to pay the bank's claim, or suggesting it might be paid. What was the bank's claim?

Mr. BRONSON: No, I didn't say that. I asked him whether or not he recalled that we proposed to him if he would let us have the sale of this property. That is another thing. Don't you remember that we stipulated that if you would let us have the handling of that machinery for a period of time of about a year, that we agreed with you that if we could not

(Testimony of D. C. Latourette.)

sell it for enough to pay your claim and something on our own, we would sell it on your account?

A. No, sir.

Q. Don't you remember that we asked for time, or had Mr. Latourette, in other words, for some time?

A. I don't think from me. I don't think you asked for any time. You may have from Mr. C. D. Latourette, possibly, but I don't think you did from me.

Mr. BRONSON: No, I don't think we saw Mr. C. D. Latourette that day.

RE-DIRECT EXAMINATION (Resumed).

Q. I put it the bank's claim, counsel says your claim. What was that?

A. You mean the amount of the claim?

Q. Yes, and the nature of it.

A. About \$17,000, I think, at that time. There was a chattel mortgage and some notes, and an overdraft in the bank, and I think it ran up to some sixteen—fifteen or sixteen or seventeen thousand dollars.

RE-CROSS EXAMINATION.

Q. Don't you recall this, Mr. Latourette, that we spoke of the fact that you had security on more of this property than we had? In other words, you had security against all of that property, we only claimed a conditional sale against the part that we sold them?

(Testimony of D. C. Latourette.)

A. No, no, I don't think there was anything of that kind said.

Witness excused.

F. T. Meyer, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Gearin:

What is your business, Mr. Meyer?

A. Banking.

Q. Where?

A. First National Bank, Oregon City.

Q. Were you engaged in that business in the spring of 1911?

A. I was.

Q. Do you recall the time of the sale by receivers of this property about which this litigation was started?

A. Yes, sir.

Q. Were you present at that time?

A. At the sale?

Q. Yes.

A. No, I was not.

Q. I will ask you if you bid in the property?

A. Our attorneys bid it in, Mr. C. D. Latourette.

Q. And they say the transfer was made to you?

A. To me, yes.

(Testimony of F. T. Meyer.)

Q. Up to that time, Mr. Meyer, I will ask you if you were informed by anyone, or had any knowledge that the Pacific Machinery Company claimed title to that property or any part of it?

A. I did not know of any.

Q. Do you remember Mr. Garrett and Mr. Bronson being there, at that time when the bids were opened?

A. I do not.

Q. Did you have any conversation with them?

A. Well, if anybody would call, why, I would direct them to Mr. Latourette.

Q. So nobody told you anything about it; you told nobody anything about it?

A. I didn't tell anybody.

CROSS-EXAMINATION.

Questions by Mr. Bronson:

You were acting in some capacity in the bank there that morning?

A. Cashier.

Q. Were you cashier?

A. Yes.

Q. I know you were cashier or teller. Don't you remember Mr. Garrett and me coming there to you before the bank opened?

A. No, sir, I do not.

Q. Your telling us that when we told you what our business was, that we would have to see Mr. Latourette?

(Testimony of F. T. Meyer.)

A. Well, now, it might have been you folks that came in, but if it was, I don't recognize you, because the thing of it is that the party that I think that was in there inquiring about the machinery or about the mill, had come in during banking hours, and I directed them to the banking room; that is, into the law office, to Mr. Latourette.

Q. Yes, but don't you recall, Mr. Meyer, Garrett and I coming in there before the bank opened?

A. No, I do not.

Q. Shortly before banking hours?

A. I do not recall it.

Q. Don't you remember our coming in there and telling you in substance that we had a claim on this property, and that we didn't want to buy it—bid it in; we understood the bank had some interest in it, and inquiring as to when we could see Mr. Latourette about it?

A. No, I haven't any—

Q. You don't recall Mr. Garrett and I coming in at all?

A. I do not.

Q. You are the cashier of the bank?

A. I am.

Q. And you bought this in for Mr. Latourette's account?

A. That is the idea.

Q. For the bank's account?

Witness excused.

J. J. Cook, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Gearin:

Mr. Cook, where do you live?

A. Oregon City.

Q. How long have you lived there?

A. Oh, I have lived there all my life, practically.

Q. Do you remember the time of the failure of the Oregon City Lumber Company?

A. Yes.

Q. Assignment for the benefit of their creditors?

A. Yes, sir.

Q. They made an assignment to whom?

A. To Mr. Moffitt and myself.

Q. You were the assignees under the statute?

A. One of them.

Q. You took possession of all the property, did you?

A. Yes, sir.

Q. You had a sale of that property up there, had you?

A. Yes.

Q. Do you remember when that sale was?

A. I don't recall the day exactly, because it has been a long while ago. It has passed from my mind.

Q. I think it is agreed it was some time in the spring of 1911.

A. Yes, 1911.

Q. Do you know Mr. Bronson or Mr. Garrett?

(Testimony of J. J. Cooke.)

A. No, sir.

Q. Do you recall seeing them in Oregon City at the time of that sale?

A. No. I don't remember seeing them before.

Q. At the time of the sale, or up to that time, had anybody told you that the Pacific Machinery Company, or anyone, claimed title to any of that property?

A. No, sir.

Q. Outside of the Lumber Company?

A. No, sir.

Q. No such claim was made before the receiver?

A. No, sir.

Mr. BRONSON: You are asking, as far he is concerned?

Mr. GEARIN: Oh, yes.

Q. How was the sale made? By sealed bids, was it?

A. I disremember now.

Q. At all events, it was sold to Mr. Meyer?

A. Yes.

Q. And he was put in possession of the property, was he?

A. I presume so, yes. We turned it over to him.

Q. You sold it all?

A. Yes.

Q. The building and leasehold, whatever it was?

A. Yes.

Q. This machinery that is talked of here, do you

(Testimony of J. J. Cooke.)

recognize what we are talking about, the machinery that is involved here?

A. I think I do, yes.

Q. State whether or not that was a part of the building?

A. Well, the machinery was in the building.

Q. Yes, affixed to the building?

A. Yes.

Q. For the purpose of a sawmill?

A. Yes.

Q. At that time, Mr. Cook, what business were you in?

A. I was in the hardware and implement business at that time.

Q. Now, where was your store situated?

A. Well, it is in the same block, this side of where the bank is.

Q. You have been in that business ever since?

A. Until about a year ago. I am in the post-office now.

CROSS-EXAMINATION.

Questions by Mr. Bronson:

Mr. Cook, where is Mr. Moffitt?

A. I don't know where he is. I understood he was in California.

Q. Who made the sale, you or Mr. Moffitt?

A. I don't remember which one of us.

Q. You don't remember which one?

A. No, we was there.

(Testimony of J. J. Cooke.)

Q. Is your office, or did he have an office on the opposite side from the bank, and either a little toward Portland as the street railroad runs, or else just a little way the other way and upstairs, at that time? Did one of you have an office there?

A. I disremember where his office was. Mine was in the store, though, in the same block this side.

Q. Down on the ground floor?

A. Yes, sir.

Q. Well, then, didn't he have an office across the street?

A. I don't know.

Q. This sale really consisted of opening a bid, or opening a letter? That is what it amounted to, isn't it?

A. I forgot. I disremember positively just how the sale was made.

Q. You don't remember. I want to be perfectly frank—we haven't any desire to win this case by any possible misrepresentations. I will state to the Court frankly I don't know whether it was Mr. Cook or Mr. Moffitt in that particular. My memory in that regard is as defective as his. I only remember certain transactions in connection with it.

RE-DIRECT EXAMINATION.

Q. Where is Mr. Moffitt, do you know now?

A. I don't know where he is. I understood he had gone to California with his family.

(Testimony of J. J. Cooke.)

Q. You recall now, Mr. Cook, that notices were published of that sale in the newspaper?

A. Yes, sir.

RE-CROSS EXAMINATION.

Q. Mr. Cook let me ask you a question. Do you remember a discussion which took place that day with reference to a prior mortgage on this property held by a man in California?

A. No, sir.

Q. Whose rights were claimed to be better than both the Latourette claim and our claim?

A. No, sir.

Q. You don't remember anything about that?

A. No, sir.

Witness excused.

C. D. Latourette, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Gearin:

Mr. Latourette, you are an attorney, and reside at Oregon City?

A. Yes, sir.

Q. You are attorney for the bank—what is the name of the bank?

A. The First National Bank.

(Testimony of C. D. Latourette.)

Q. Do you recall the transaction with reference to this machinery with the Lumber Company, the Pacific Machinery Company, and the time of the sale, and all of that?

A. Yes, sir.

Q. You had charge of this proceeding as attorney for the bank, did you?

A. Yes, and for the assignees.

Q. For the assignees. And did you prepare the papers, the notices of sale and publication, and such proceedings as were had with reference to it?

A. Yes, sir. The sale was to be on sealed bids, and there was publication in the Portland papers, or at least one of them, and then there were postal cards, printed notices of the sale, sent out to a good many mill people: published also in the Oregon City paper.

Q. Were you there at the opening of the bids?

A. Yes.

Q. Who else was there?

A. Well, I don't recollect about that. There was no bid except the bid of the bank, or of Mr. Meyer for the bank.

Q. Mr. Meyer made a bid, and it was the only bid?

A. Yes.

Q. And the property was sold to Mr. Meyer?

A. Yes, sir. And a bill of sale made at the time by the assignees, both of them.

Q. Had you, as attorney for the bank, or as

(Testimony of C. D. Latourette.)

attorney for the receiver, or in any capacity, or at all, ever been informed up to that time that the Pacific Machinery Company claimed any title to that property?

A. No, sir, none whatever.

Q. When did that matter first come to be talked of?

A. Well, on the day of the sale the Garrett brothers came up—

Q. Garrett brothers?

A. Yes, sir.

Q. Both of them?

A. I think they were both there. I know this gentleman was there. That sale had ben put off, postponed for several months, at the request of Mr. Garrett.

Mr. BRONSON: What is that, Mr. Latourette? I cannot hear what you say.

A. It had been postponed—the advertisement of the sale had been postponed because Mr. Garrett was figuring on organizing a company to take over that property, and it was understood that his brother—this gentleman here—was coming up from California, and we held the sale off until a time when this Mr. Garrett would be able to be here. And there was an understanding between the other Mr. Garrett and this one, too, when he came that morning, that we were to bid that property in, and that the Garretts, or they had connections they said, by which they could organize a company, and take

(Testimony of C. D. Latourette.)

that property over at what we had in it, or what the bank had in it, with the interest. That is all we wanted to get out of it—all we expected to get. And I think they were both there that morning, and Mr. Bronson, too, as I remember. But I don't think they stayed to the sale.

Q. They knew of the sale?

A. Oh, yes, they knew of the sale. And after the sale—now, the understanding was that they were to pay five thousand dollars down, and have terms on the balance. Shortly after the sale, the other Mr. Garrett who was residing in Portland came up and said that they were unable to raise five thousand dollars, and wanted to have the property turned over on the payment of two thousand dollars. And after some little talk, and I think consultation with my partner, I told him that we would be satisfied.

Q. Well, now, you mean upon payment of two thousand dollars, and what provision was to be made for the balance of the bank's claim?

A. Well, they were to make quarterly payment of the balance.

Q. How much was the bank's claim?

A. Well, I forgot how much that was. At that time, I think they owed the bank about fourteen thousand dollars. It might have been twelve.

Q. The bank had a mortgage, didn't it?

A. Yes.

Q. Now, go right along with your story.

(Testimony of C. D. Latourette.)

A. So then he went off to Portland again, and it ran along for some little time—probably it might have been two or three weeks.

Mr. BRONSON: Is there anything material, Mr. Gearin, in any subsequent transactions?

Mr. GEARIN: It is only the conversation that was had right down here.

Mr. BRONSON: I have no particular objection only it is filling the record.

Q. You came down to Portland?

A. One day I got a telegram from Mr. Garrett wanting to know if I could come down. I told him I would be down in the afternoon. He said that Mr. Bronson was over from Seattle and wanted me to come down. I think I came down early, and Mr. Moffitt came with me. He said he wanted to see me about that machinery, and so when I got down here, Mr. Bronson was in their Office, and Mr. Bronson did most of the talking, and he said he wanted us to turn that machinery over, the whole plant over to Garrett, and give them two years to make the first payment, taking it out what we had in it. Well, I says, "Mr. Bronson, we can't do that."

Mr. BRONSON: We made a number of propositions to settle this thing since. I don't think they are material.

Mr. GEARIN: I want to show this is the first time Mr. C. D. Latourette ever heard of the claim of the Pacific Machinery Company.

Mr. BRONSON: He has testified to that.

(Testimony of C. D. Latourette.)

Mr. GEARIN: No, he hasn't.

Mr. BRONSON: He said he didn't know about it before.

A. Then Mr. Bronson said, "If you don't do that"—of course there was some more talk—if you don't want that I won't give it, at that meeting—but Mr. Bronson said, "Well, if you don't do that, we are going to make a claim for that machinery." "Why," I says, "what do you mean?" and he says, "Conditional sale contract." "Well," I says, "where is your conditional sale contract?" "Well," he says, "we haven't got any in writing, but," he says, "we were to get one." "Well, now," I says, "this is a pretty time to speak about anything of that kind." And I got up and I told him that we couldn't consent to giving him two years on the first installment, after they had agreed to pay five thousand dollars down, and then I had come down to two thousand dollars.

Q. Is that the first time that you ever heard of this conditional sale?

A. That is the first time that I ever heard of it, yes.

Q. Where is Mr. Moffitt?

A. I heard he was in California. I think he has been down there for several weeks.

CROSS-EXAMINATION.

Questions by Mr. Bronson:

We have had a number of conversations, your-

(Testimony of C. D. Latourette.)

self and myself, Mr. Latourette, subsequent to that time, and proposals?

A. I don't think we ever talked any except that morning of the sale that you were up there. I cannot recollect now, Mr. Bronson.

Q. Didn't I meet you a few months later, down here in Portland, and have a talk with you in Portland, up here at this Club here?

A. A few months later?

Q. Yes.

A. Where? At what place.

Q. Up at the Club, about a block or two beyond the Portland Hotel?

A. Yes, I remember meeting you up there. That was since the sale.

Q. We had a talk there about it, too, didn't we?

A. Since the sale, yes.

Q. We had a talk here three or four months ago about a settlement? All I am getting at—we have had a number of conversations trying to adjust this matter?

A. I think perhaps three different occasions.

Q. Well, now, you were present when we talked with the other Mr. Latourette in Oregon City?

A. Why, I remember when you came in there, and we were both there. I don't know how many times you talked with him. I remember when you came in.

Q. Where did this sale take place?

A. There at our office.

(Testimony of C. D. Latourette.)

Q. In the bank?

A. Yes.

Q. And the sale consisted simply in opening a letter, didn't it?

A. Yes; sealed bid.

Q. You were attorneys for the assignees?

A. Yes.

Q. You were attorneys for the bank, and attorney for Mr. Meyer?

A. Well, I was not acting then for the bank. I was acting for the assignees. I was not acting for Meyer—I was acting for the assignees at that time.

Q. But Mr. Garrett and I did not attempt to negotiate with you at that time. We had been turned over to the other Mr. Latourette as the man who would handle any settlement that was made, weren't we?

A. Well, I don't know whom you had been turned over to. I knew that you were figuring. The Garrett's claim was the largest claim outside of the bank, and I understood they were interested in trying to get their money. They had agreed to take stock for their claim.

Q. We had a number of different propositions that were suggested, didn't we?

A. What?

Q. I say, a number of different propositions during the day, were suggested by Mr. Latourette, or by ourselves, with reference to this matter?

A. I don't think that any but one proposition

(Testimony of C. D. Latourette.)

except as to the amount that they were to pay down.

Q. Hadn't that proposition of buying this whole mill—pour property, I mean to say, the mill including all that your chattel mortgage covered—that had been taken up with Mr. Tom Garrett several weeks prior, hadn't it?

A. To the sale?

Q. Prior to the sale. What I mean is this: Prior to this sale, say just roughly two or three weeks or a month, there had been some negotiations between Mr. Tom Garrett and the bank down there, with reference to buying all of the machinery in the mill—everything—not simply what we had sold them, but all of it?

A. The sale was put off to accommodate him, to oblige him.

Q. And that was on the theory that perhaps he could arrange a scheme to buy the whole mill?

A. Yes.

Q. Now, that was one of the things, of course, you were talking about the day the sale took place?

A. Oh, yes. I think Mr. Garrett was up a number of times.

Q. Are you positive, Mr. Latourette—I am not impeaching your word, of course; I know that—but are you positive at this time that either Mr. Edward I. Garrett or myself, or Mr. Thomas Garrett ever said anything about the fact that we had sold this machinery to the Oregon City Lumber & Manufacturing Company, upon agreement for conditional

(Testimony of C. D. Latourette.)

sale, and that we were asserting that we had some rights there?

A. Yes, you never—

Q. What?

A. You nor no one else ever intimated to me until that meeting.

Q. I am not saying to you. I am simply saying as to what you might have heard from your brother.

A. No, sir, I never heard anything about it.

Q. We didn't have much negotiation with you that day, did we?

A. Down here?

Q. Down at Oregon City on the day of the sale. You were not then negotiating with Mr. Edward I. Garrett and myself. You did not conduct the negotiations?

A. Well, my recollection is, Mr. Bronson, that Mr. Garrett, the younger Garrett—

Q. I don't say anything about—Mr. Thomas Garrett was not there at that time at all.

A. Well, maybe not, but I say before that, we had everything all worked up, as I understood, and he was waiting for his brother to come.

Q. That may be. I am not discussing that with you at all. I am merely asking you whether or not at the date of the sale Mr. Edward Garrett and I dealt with the other Mr. Latourette—if that is not the fact?

A. Well, I don't have any recollection about how

(Testimony of C. D. Latourette.)

much conversation we had, but Mr. Garrett understood the arrangement that was to be made.

Q. Oh, that all may be.

A. He told me that.

Q. The arrangement never was perfected; that is all, isn't it?

A. Well, he never came through.

Q. There was a proposition made, but it never was finished out into an agreement?

A. That is right.

Witness excused.

Defendant then rested.

At the close of all the testimony and before the Court had rendered its decision, the defendant tendered and requested the Court to make and find the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

I.

That on or about the 29th day of April, 1909, the plaintiff sold to the Oregon City Lumber & Manufacturing Company, a corporation under the laws of Oregon, all of the personal property described in Plaintiff's Complaint herein and delivered the said property to the said Oregon City Lumber & Manufacturing Company at various times during the

spring and summer of 1909, the last delivery being made about the 9th day of September, 1909.

II.

That said machinery was sold to the said Oregon City Lumber & Manufacturing Company for the purpose of having the same installed in and to become a part of a mill then in course of remodeling by said Oregon City Lumber & Manufacturing Company, and that the plaintiff had full knowledge at the time of such sale of the purpose for which said machinery was purchased and would be used. That when the said machinery was received by the said Oregon City Lumber & Manufacturing Company it was immediately affixed to and became a part of the said mill owned by said Oregon City Lumber & Manufacturing Company and still remains so attached to and a part of said mill.

III.

That on or about the 11th day of November, 1909, said Oregon City Lumber & Manufacturing Company became insolvent and made an assignment of all of its property, including the property described in the plaintiff's complaint, for the benefit of its creditors.

IV.

That on the 21st day of April, 1911, after having given due notice as provided by statute, the assignees of said Lumber Company duly and regularly sold all of said property to the defendant in this suit and delivered possession thereof to said de-

fendant. That the plaintiff in this suit had actual notice thereof and was present at the time of said sale and made no objection thereto.

V.

That no formal written contract was ever entered into between the plaintiff and said Oregon City Lumber & Manufacturing Company and that the only writing in relation thereto was the paper introduced in evidence by plaintiff, marked Exhibit "A," and is in words and figures as follows:

"Portland, Oregon, April 29, 1909.
Oregon City Lumber & Mfg. Co.,
Oregon City, Oregon.

Gentlemen:

We propose to furnish you machinery in accordance with attached specification for the sum of \$4695.00, including a 11x14 Beck type engine feed, which is not mentioned in the specifications, delivery to be made at Portland. Terms to be \$1500.00 cash on arrival of the machinery, balance to be paid in equal payments of two, three, four, and five months dating from shipment of machinery. Transaction to be covered by machinery contract, with notes on deferred payments bearing interest at 5%, notes to be endorsed by the Company as well as by your Mr. Bohn and Mr. Collins, personally.

Yours truly,
PACIFIC MACHINERY COMPANY,
Thos. Garrett, Mgr.

Accepted.

Oregon City Lumber & Manfg. Co.,

By Wm. C. Bohn, Prest.,

George W. Collins."

WITH

"Specifications of Saw Mill Machinery for Oregon City Lbr. & Mfg. Co., Oregon City, Oregon, from Pacific Machinery Company, Portland, Oregon," attached.

VI.

That the defendant is now and ever since the 21st day of April, 1911, has been in possession in Clackamas County, Oregon, of the personal property described in Plaintiff's Complaint, and of the mill, mill building and property to which said personal property was and still is attached, as set out in Finding II.

VII.

That no memorandum of the sale evidenced by said written memorandum described in Finding V herein, stating the terms of said sale or any description of the said personal property or signed by the vendor or vendee, nor any memorandum whatever was ever filed in the County Clerk's office or Recorder's office of the said County of Clackamas, at any time.

As to Conclusions of Law, the Court finds:

I.

The transaction between plaintiff and the Oregon

City Lumber & Manufacturing Company, evidenced by said written offer and acceptance, as set out in Finding V herein, was an absolute and not a conditional sale and vested the complete title in the Oregon City Lumber & Manufacturing Company.

II.

That when said personal property became affixed to the mill building it became a part of the realty and was no longer a subject of replevin.

III.

That the plaintiff by permitting the sale by the Receivers of the Oregon City Lumber & Manufacturing Company to the defendant and by being present at said sale and by not objecting thereto must be held to have waived any rights which up to that time it might have had and is now estopped to assert such or any rights in opposition to the title of the defendant to said property.

IV.

That by the provisions of Section 7414, Lord's Oregon Laws, although the transaction of April 29, 1909, might have been intended by the plaintiff to have constituted a conditional sale, retaining title to the property in plaintiff, yet plaintiff not having filed said paper in accordance with the provisions of said section, the condition became void and the title vested absolutely in the Oregon City Lumber & Manufacturing Company.

V.

That defendant is entitled to judgment for his costs and disbursements.

The Court refused to make or find the foregoing Findings of Fact and Conclusions of Law, or any of them, and the defendant was duly allowed an exception to said ruling as to each of said requested Findings of Fact and Conclusions of Law.

The foregoing proposed Findings of Fact and Conclusions of Law, as they do not appear upon the record, are hereby incorporated by the defendant into this, its Bill of Exceptions.

Hereunto annexed are all the exhibits mentioned in the foregoing transcript of the testimony offered and received upon the trial, and the said transcript and the said exhibits constitute all the evidence offered and received upon the trial of said cause, and the said exhibits are hereby by reference thereto, made a part of this Bill of Exceptions, which is signed, settled and allowed by me this 9th day of November, 1916.

CHAS. E. WOLVERTON,

Judge.

Filed November 9, 1916.

G. H. MARSH, Clerk.

The exhibits offered and received upon the trial of said cause, referred to in the foregoing Bill of Exceptions and not included therein, are in words and figures as follows, to-wit:

DEFENDANT'S EXHIBIT 2.

Portland, Oregon, Dec. 9, 1909.

We have examined the attached proposition of reorganization of the Oregon City Lumber & Manufacturing Co., as proposed by the creditors of said company whose signatures appear to said list. From it, we gather that the following is the scheme:

That the said corporation's authorized capital stock at this time is \$75,000; that of this \$41,000 has been subscribed and paid in. That it is proposed to increase this to \$100,000 as provided by statute.

That the creditors will then take \$50,000 of the increased capitalization, or an amount equal to their total claims against said concern, whether it be more or less.

That said stock is to be issued to them under such an arrangement of the by-law as will make said stock preferred and will be issued to the creditors of said concern signing said list in an amount equal to their respective claims upon the surrender to the corporation of such claim, stock to be issued as fully paid up and non-assessable, the surrender of the claim to be taken as payment therefor.

That the holders of this preferred stock shall then taken over the management of the affairs of this corporation, free and clear of any interference on the part of the original holders and operators thereof, and continue to manage it until such time as the proceeds from said management shall satisfy all of said claims or retire said preferred stock in

pursuance of the by-laws to provide for said retirement, together with 6% annual dividends to be guaranteed thereon.

That when said stock is taken up and retired, and the face and dividends earned thereon paid, that the management and control of said corporation shall be returned to the original stockholders thereof.

That subscribing and signing of this statement and consenting to said arrangement does not bind the undersigned to advance or subscribe any cash to the advancement and carrying out of this arrangement, and they shall not be considered and held as liable for the payment of any cash, or assuming any liability in connection therewith, further than the cancellation of their said claim, and that any payments of advancement of cash hereafter to be used in the operation of said plant by these or other of said creditors signing said list shall be wholly voluntary on their part, and a matter to be hereafter considered.

CLARKE WILSON LUMBER CO.\$ 201.94

By G. W. Stapleton, its atty.

OREGON LUMBER CO. 1127.45

By G. W. Stapleton, atty. for clam't.

Francis Welsh 428.70

Harvey O'Bryan 489.45

J. P. Johnson 132.00

Larsen & Co. 43.65

Oregon City Enterprise 47.25

IN CONSIDERATION of the promise of the directors and officers of the Oregon City Lumber & Manufacturing Company to reorganize the affairs of said Company and to relieve the said Company from its embarrassing position, and other considerations, we, the undersigned, hereby subscribe to the capital stock of said corporation the number of shares set opposite our names at \$100.00 each, upon the understanding and express agreement, to-wit:

That said shares of stock are to be delivered to us upon condition that the same shall be an offset against the claims that we now have against said Company, and the certificates of such stock shall read to be non-assessable and to be of the first issue of \$50,000, preferred stock of said Company, said stock to return dividends of 6% per annum, payable before any dividend shall be declared upon common stock, and that said stock shall be retired and taken up by order of the directors of said Company at any future time by payment of the face value thereof, together with 6% per annum since the last dividend theretofore declared thereon, but it being understood that a retirement of such stock shall be pro rata upon the amount issued, and not otherwise; and that the said corporation shall not be capitalized by any supplemental articles, or otherwise, in excess of the sum of \$100,000 without the express consent in writing of each and every holder of such preferred stock.

Dated November 9th, 1909.

J. W. Moffiatt, Oregon City, Ore.....	\$ 2,000.00
E. W. Barnes	11,255.54/100
Portland Machinery Co., T. H. Comerford, Treasurer	106.87
J. E. Haseltine & Co., W. C. Haseltine, Sec.	251.42
Pacific Machinery Co., by Ira Bronson, Atty., approx.....	5,724.86
Smith & Watson Iron Works, Robt. Collier, Secy.	486.66
Crane Co., by E. H. Webb, Cashier...	215.28
Willamette & Columbia River Towing Co., by W. E. Jones, Sec.....	400.00
Standard Box & Lbr. Co.	736.09
S. P. H. Lumber Co., Portland, Ore..	688.10
Oregon Kansas Lumber Co., by W. D. Jellison, Pt.	673.35
Donald Lumber Co., by G. W. Evans, Pres.	383.71
John A. Roebling's Sons Co., per L. H. Parker	246.56
A. J. Harper	430.85
Central Door & Lumber Co.	1,266.63
A. Stepani	1,577.12
Portland Iron Works, by H. T. Clarke, Prest.	129.80
E. H. Mills & Co.	105.79
Kalama Logging Co.	2,735.51
Kelley Bros.	129.00
Redland Lumber Co., by U'Ren & Schuebel, Attys.	800.00

Nott - Atwater Company, per E. J.	
Munnell, Secy.	654.83
Greenwood Lumb. Co., per O. A.	
Wheeler	331.46
The Machine Manufacturing Agency,	
M. R. Colby	133.65
Beaver Lumber Co., by R. F. Barker,	
Pres.	1,687.76

On condition that this subscription for preferred stock is to be paid for by the Beaver Lumber Company's claim against said Oregon City Lumber & Mfg. Company for the amount of this subscription, and that all creditors of said Oregon City Lumber & Mfg. Co. whose claims exceed \$100.00 each join in this arrangement on or before December 31, 1909, and that in the reorganization of said Oregon City Lumber & Mfg. Co., provision be made for the management and operation of said company until the preferred stock hereby subscribed for is paid for by persons selected by the creditors who sign this document.

The Paraffine Paint Co., R. S. Shainwald,	
Secy.	\$173.60
Redland Lumber Company, by F. W. Sprague	200.00
Dix Bros. Lumber Co.	53.22
J. A. Cottrell Moulding Co., by Clarence H.	
Gilbert, Atty.	150.28
Rulefson & McKenny	454.59
John Wood Iron Works	46.19

Filed January 4, 1916.

G. H. MARSH, Clerk.

DEFENDANT'S EXHIBIT 3.

Portland, Ore., July 23rd, 1909.
Oregon City Lumber & Manfg. Co.,
Oregon City.

PACIFIC MACHINERY Co.

49 First Street.

Dealers in all kinds of

MACHINERY AND MILL SUPPLIES.

Interest at 10% per annum charged on all Past
Due Accounts.

To Balance—

Contract\$4695.00

Sheets 10-16-17-19-23, &c. 1115.00

Add'l Charge bit auto trimmer

and complete set Iron Works 350.00

Bill herewith for steel pulleys,

boxes, collars, &c. 168.54

—————\$6328.54

On May 5th, 1909, we received \$100.00. Deduct
this amount from \$2035.54 that is due upon execu-
tion of this contract. In other words, get a check
for \$1935.54 and the notes signed, also contract.

Filed January 4, 1915.

G. H. MARSH, Clerk.

DEFENDANT'S EXHIBIT 4.

THIS EXECUTORY CONTRACT made and en-
tered into this 23d day of July, 1909, at the City of
Portland, County of Multnomah, State of Oregon,

by and between the Pacific Machinery Co. (a corporation organized under the laws of the State of Washington), party of the first part, and Oregon City Lumber & Manufacturing Co., of the City of Oregon City, County of Clackamas, State of Oregon, the party of the second part, witnesseth:

The party of the first part agrees:

First: That it will upon the full performance by the party of the second part of all the agreements as hereinafter set out, sell, grant and deliver to the said second party the personal property described as follows:

- 1 No. 4A Mitts & Merrill hog complete with regular trimmings.
- 1 5 H. P. Sterling vertical engine 4x5 complete with regular trimmings.
- 1 Bartlett combination lath mill and bolter complete with regular trimmings, including six S. F. saws.
- 1 Combination lath lumber and trimmer complete except saws.
- 1 Prescott 14 saw undercut trimmer complete with all necessary iron work and all necessary wood work and 476' table chains.
- 1 Slab slasher for 7 saws.

SEC. 24.

- 1 Shaft 2 15/16x4' 8" K. S.
- 1 5 T. sprocket for 7/8x6 chain ftd.
- 1 Spur gear 30x4 ftd.
- 1 Shaft 2 7/16x5' 3" K. S.

144 *F. T. Meyer vs. Pacific Machinery Co.*

- 1 Spur pinion ($6\frac{1}{4} \times 4\frac{1}{4}$) ftd.
- 1 Bevel iron friction 36×8 ftd.
- 1 Shaft $2\frac{7}{16} \times 11' 6''$ K. S.
- 1 $12 \times 9 \times 2\frac{7}{16}$ Bevel paper friction ftd.
- 2 Shafts $2\frac{7}{16} \times 4'$ K. S.
- 2 20×20 Double out end drums ftd.
- 1 Shaft $2\frac{15}{16} \times 4'$ K. S.
- 1 20×20 Double out end drum ftd.
- 200' $\frac{7}{8} \times 6$ long link chain.

SEC. 29.

- 1 Shaft $1\frac{15}{16} \times 4' 6''$ K. S.
- 3 Sprockets 15 T. No. 78 chain ftd.
- 30' $\frac{1}{4} \times 3\frac{1}{2}$ Flat iron with $\frac{1}{4}''$ screw holes.
- 1 Shaft $1\frac{7}{16} \times 12$ K. S.
- 2 Sprockets 15 T No. 78 ftd.

SEC. 26.

- 1 Shaft $1\frac{15}{16} \times 7'$ K. S.
- 1 Spur paper friction $6 \times 7 \times 1\frac{15}{16}$ ftd.
- 1 Sprocket 10 T No. 78 ftd.
- 1 Shaft $2\frac{7}{16} \times 5'$ K. S.
- 1 Eccentric box $1\frac{15}{16}$.
- 1 Spur iron friction 36×6 .

SEC. 28.

- 1 Shaft $2\frac{7}{16} \times 3' 6''$ K. S.
- 1 Sprocket 9 T No. 104 ftd.
- 1 Bevel gear $22 \times 3\frac{3}{4}$ ftd.
- 1 Shaft $1\frac{15}{16} \times 6'$ K. S.
- 1 Bevel pinion $5\frac{5}{8} \times 3\frac{3}{4}$ ftd.
- 1 Sprocket 9 t. No. 104.

SEC. 37.

- 1 Shaft 2 $7/16 \times 3'$ K. S.
- 1 Spur gear 24×3 .
- 1 Sprocket 9 T. No. 104.
- 1 Shaft 1 $15/16 \times 3' 6''$ K. S.
- 1 Spur pinion 4 $3/16 \times 3\frac{1}{4} \times 3\frac{1}{4}$ ftd.
- 1 Sprocket 9 T. No. 104 ftd.

SEC. 9.

- 1 Shaft 2 $7/16 \times 4'$ K. S.
- 1 Sprocket 9 T No. 104 ftd.
- 1 Spur gear 60 T $1\frac{1}{4}$ P: $3''$ F. ftd.
- 1 Shaft 1 $15/16 \times 5'$ K. S.
- 1 Spur pinion 15 T. ftd.
- 2 Sprockets 9 T. No. 104.

SEC. 6.

- 1 Shaft 2 $7/16 \times 4$ K. S.
- 1 Sprocket 9 T. No. 104 ftd.
- 1 Spur gear 24×3 ftd.
- 1 Shaft 1 $15/16 \times 4'$ ftd.
- 1 Spur pinion 15 T. ftd.
- 1 Sprocket 9 T. No. 104.

SEC. 36.

- 1 Shaft 2 $7/16 \times 22' 6''$ K. S.
- 3 Sprockets 15 T. No. 78 ftd.
- 1 Spur gear 24×3 ftd.
- 1 Shaft 2 $7/16 \times 7' 8''$ K. S.
- 1 Spur pinion 15 T. ftd.
- 1 Spur iron friction ftd.
- 1 Shaft 1 $15/16 \times 7' 8''$ K. S.

- 1 Spur paper friction ftd.
- 1 Steel split pulley 16x6x1 15/16.
- 1 Eccentric box 1 15/16.

SEC. 40.

- 4 Lengths 2 15/16 shaft coupled and K. S.
- 3 Pair 2 15/16 safety flange couplings ftd.
- 2 Lengths 2 7/16 shaft K. S. and coupled.
- 1 Pair reducing flange couplings 2 15/16x2 7/16 ftd.
- 1 Pair flange couplings 2 7/16 ftd.
- 1 Sprocket 36" No. 124 ftd.
- 3 Bevel pinions 14 T. 1 1/4 P. 3 3/4 F. ftd.
- 3 Shafts 2 7/16x5' K. S.
- 3 Bevel gears 55 T. 1 1/4 P. 3 3/4 F. ftd.
- 3 Sprockets 12 T. No. 78.
- 3 Shafts 2 3/16x16' K. S.
- 6 Sprockets 12 T. No. 74 ftd.
- 6 Sprockets 12 T. No. 74 ftd.
- 3 Sprockets 12 T. No. 74 ftd.
- 3 Sprockets 12 T. No. 78 ftd.
- 3 Sprockets 12 T. No. 78 ftd.

SEC. 18.

- 1 Shaft 2 7/16x7' 6" K. S.
- 1 Spur iron friction 36x8 ftd.
- 1 Sprocket 12 T. No. 124 ftd.
- 1 Shaft 2 7/16x8' K. S.
- 1 Spur paper friction 12x9 ftd.

200' No. 78 riveted chain.

180' No. 104 & C do

- 320' No. 104 & C do
 - 40' No. 124 riveted chain.
 - 900' No. 74 do
 - 90' No. 78 riveted chain.
 - 300' No. 74 do with N attach, every other link.
 - 25' No. 82 riveted chain.
 - 90' No. 104 & C do
-

- 1 11x14 Pawling & Harnischfeger Beck twin engine feed.
-

WOOD SAW MACHINE.

- 1 Arbor 2 15/16x8' 11" in 3 sections coupled.
- 2 Pair saw collar couplings ftd.
- 3 Post Boxes 2 15/16.
- 2 Set collars 2 15/16.
- 1 C. I. Web center arbor pulleys 24x10.
- 1 C. I. Pulley 10x6 ftd.
- 1 Shaft 1 15/16x8' 2" K. S.
- 6 Sprockets 11 T No. 74 ftd.
- 1 Sprocket 30 T No. 74 ftd.
- 3 Post boxes 1 15/16.
- 1 Shaft 1 7/16x4' 5" K. S.
- 1 Sprocket 11 T. No. 74 ftd.
- 5 Sprockets 11 T. No. 74 ftd.
- 4 Solid boxes 1 7/16x13¼.
- 8 Set collars 1 7/16.
- 34' 1/8x21½ flat rolled iron drilled and C. S.

WOOD SAW DRIVE RIG.

- 1 Shaft 1 15/16x4' K. S.
- 1 C. I. Pulley 30x6 ftd.
- 1 Spur paper friction 6x7 ftd.
- 1 Set collar 1 15/16.
- 1 Sliding box 1 15/16.
- 1 Flat box 1 15/16.
- 1 Shaft 1 15/16x4' K. S.
- 2 Flat boxes 1 15/16.
- 1 Spur iron friction 30x6x1 15/16 ftd.
- 1 Sprocket 11 T. No. 74 ftd.

SEC. 10.

- 1 Shaft 2 7/16x22' K. S.
- 3 Sprockets 12 T No. 78 ftd.
- 1 Bevel friction 36x8.
- 1 Shaft 1 15/16x11' 8" K. S.
- 1 Bevel friction 6 1/16x3 1/4 ftd.
- 1 C. I. Pulley 18x8x1 15/16 ftd.
- 1 C. I. Pulley 16x6x1 15/16 ftd.

SEC. 17.

- 1 Shaft 1 15/16x5' 6" K. S.
- 1 Bevel gear 19 1/16x3 1/4 ftd.
- 1 C. I. Pulley ftd. 20x6.
- 1 Sprocket 9 T No. 74 ftd.
- 1 Shaft 1 15/16x5' K. S.
- 1 Bevel pinion ftd.
- 1 C. I. Pulley 24x6x1 15/16 ftd.

SECS. 16-19.

- 1 Shaft 3 15/16x16' 6" K. S.

- 1 Pair bevel mortise gears.

SEC. 70.

- 1 Shaft 1 15/16x3' K. S.
- 1 9 T. No. 104 sprocket ftd.
- 1 Shaft 2 7/16x24' K. S.
- 2 Sprockets 15 T No. 78 ftd.
- 1 Sprocket 12 T No. 87 ftd.
- 1 Bevel gear 32x5 ftd.
- 1 Shaft 1 15/16x6' K. S.
- 1 Bevel pinion 77/8x5 ftd.
- 1 Shaft 2 7/16x3' 6" K. S.
- 1 Sprocket 13 T No. 87 ftd.
- 1 24x6x1 15/16 C. I. Pulley.
- 1 Shaft 2 7/16x3' 8" K. S.
- 1 Sprocket 9 T. No. 104 ftd.

SECS. 2-3.

- 1 Shaft 3 7/16x6' 3" K. S.
- 1 Shaft 3 15/16x12' 8" K. S.
- 1 Pr. 3 15/16x3 7/16 dental clutch couplings ftd.
- 1 Shaft 3 15/16x14' K. S.
- 1 Pr. 3 15/16 safety flange couplings ftd.
- 5 2 3/16 flat boxes.
- 27 2 7/16 flat boxes.
- 1 1 7/16 Shifter hub and fork (Sec. 10).
- 1 26x6x1 15/16 S. S. Pulley (Sec. 9).
- 1 26x6x1 15/16 do (Sec. 6).†
- 1 24x8x2 7/16 do (Sec. 18).
- 1 8x4x2 7/16 W. S. Pulley (Sec. 18).
- 1 30x8x2 7/16 S. S. Pulley (Sec. 24).
- 1 2 7/16 Shifter hub and fork (Sec. 24).

150 *F. T. Meyer vs. Pacific Machinery Co.*

- 1 36x6x1 15/16 S. S. Pulley (Sec. 26).
- 1 36x4x1 15/16 do (Sec. 28).
- 1 Shaft 1 15/16x3' do (Sec. 37).
- 1 20x4x1 15/16 S. S. Pulley (Sec. 37).
- 20 1 7/16 Solid boxes.
- 1 Shaft 2 7/16x19' 6".
- 1 Shaft 2 7/16x9' 6".
- 1 Shaft 1 15/16x20'.
- 1 Shaft 1 7/16x16'.
- 1 Shaft 1 15/16x20' K. S.
- 1 Shaft 1 15/16x20' K. S.
- 1 Shaft 2 7/16x20' K. S.
- 1 Shaft 2 7/16x16' K. S.
- 2 Pr. 1 15/16 couplings ftd.
- 1 Pr. 2 7/16 couplings ftd.
- 1 Pr. 3 15/16 safety flange couplings.
- 2 Shafts 2 7/16x3' 6".
- 1 Shaft 2 7/16x6' 7".
- 1 Shaft 2 7/16x3'.
- 2 Shafts 2 7/16x10'.
- 10 2 7/16 flat boxes.
- 4 2 15/16 flat boxes.
- 22 2 7/16 set collars.
- 13 2 7/16 flat boxes.
- 30 1 15/16 do.
- 2 2 15/16 do.
- 4 2 3/16 do.
- 4 3 15/16 do.
- 1 1 15/16 Eccentric box.
- 2 2 7/16 do.

- 15 1 15/16 Set collars.
- 14 2 7/16 do.
- 4 2 15/16 do.
- 2 2 3/16 do.
- 3 3 15/16 do.
- 2 16x4x1 15/16 Philips' steel pulleys.
- 1 10x4x1 15/16 do.
- 1 6x3x15/16 wood pulley.
- 1 14x6 Steel split pulley—Philips'.
- 1 3 15/16 Flat box babbitted.
- 12 1 15/16 Safety set collars.
- 6 2 7/16 do.
- 1 32x8 Phillips' steel split pulley.
- 1 Box (55 lbs.) Sterling Babbitt.
- 10' No. 74 Chain "N" Attachments every other link.
- 2 2 7/16 Set collars.
- 4' 2 7/16 1/4 W. P. Bushing.
- 1 Shaft 1 15/16x7' 3" K. S.
- 5' 1 15/16 wood pulley bushing.
- 180' No. 78 riveted chain.
- 90 Attachments "B" for above.
- 20' No. 87 Riv. Chain.
- 5 Sheets red friction paper.
- 1 Shaft 1 15/16x20'.
- 1 Shaft 1 15/16x11'.
- 1 16x6x3 15/16 W. S. Pulley.
- 1 14x8x3 15/16 W. S. Pulley.
- 1 12x8x3 15/16 W. S. Pulley.
- 1 8x6x3 15/16 W. S. Pulley.
- 1 12x8x2 15/16 S. S. Pulley.
- 2 10x6x2 15/16 S. S. Pulleys.

- 1 40x8x2 7/16 S. S. Pulleys.
- 1 30x12x2 7/16 S. S. Pulleys.
- 1 26x10x2 7/16 S. S. Pulleys.
- 1 24x10x2 7/16 S. S. Pulleys.
- 2 24x8x2 7/16 S. S. Pulleys.
- 1 20x10x2 7/16 S. S. Pulleys.
- 1 18x8x2 7/16 S. S. Pulleys.
- 1 16x10x2 7/16 S. S. Pulleys.
- 1 8x6x2 7/16 W. S. Pulleys.

Second: That it will upon the execution of this agreement deliver said personal property into the possession of said second party at the City of Seattle aforesaid; and will permit said second party to remove the same to Oregon City, County of Clackamas, and to use the same in the manner and for the purposes for which the same is designed for such time, and so long as the second party shall perform the agreements in this contract set forth.

And said second party agree: First, that they will purchase said personal property from said first party and pay therefor as follows:

2035.54 Dollars upon the execution of this contract.

1073.25 Dollars on the 23d day of September, 1909.

1073.25 Dollars on the 23d day of October, 1909.

1073.25 Dollars on the 23d day of November, 1909.

1073.25 Dollars on the 23d day of December, 1909.

Said several payments to be evidenced by the promissory notes of the said second party which shall in no event be considered as payments until all said notes are actually paid, and each payment hereinabove mentioned is and shall be a condition

precedent to the sale and transfer of the above described property.

Second: That Oregon City Lumber and Manufacturing Co. acknowledge receipt of said personal property at the City of Portland, County of Multnomah, State of Oregon, and agree to cause the same to be transported to said Oregon City at the sole expense, risk and cost of said second party; that they will not use the same for any other purpose than that for which it is designed; that they will not permit the same to be taken out of their possession; nor except with the written consent of said first party remove the same to any other place.

Third: Should any loss, damage or injury result to the said property from any cause, said loss, damage or injury, shall not relieve said second party from their obligation to pay for said property according to the terms of this contract in the same manner as if the same had suffered no loss, damage or injury.

Fourth: Said second party further agree that until they shall have fully performed all the agreements as herein set out they will cause the said property to be insured in an Insurance Company to be designated by the first party in the sum of Five Thousand Six Hundred Dollars, the loss, if any, payable to the said first party.

It is expressly understood and agreed between the parties to this agreement that:

First. The title to the property herein described shall remain in said first party until the full per-

formance of all the conditions herein agreed to be performed and the payment of all the payments herein agreed to be made by said second party, and that upon full payment of said promissory notes, principal and interest, according to the terms, the title to said property shall thereupon vest in said party of the second part.

Second. That in the event the said second party shall fail to make any and all payments herein provided for, when the same shall become due, then all sums heretofore paid by said second party on account of this contract, shall be deemed as rental for the use of said personal property and not as payment on account of the purchase price, and this contract of conditional sale shall be forfeited and determined at the election of the party of the first part: and the said first party may, at its election, immediately take possession of said personal property, using all force necessary to obtain the same, with or without process of law.

Third. That any failure on the part of said first party to take advantage of any breach of this contract shall not be deemed a waiver of its rights to take advantage of any subsequent breach, and default of the party of the second part shall not operate to extinguish or diminish any liability upon the said notes or upon any of them.

Witness our hands and seals this day and year
hereinabove first written.

..... (Seal)

..... (Seal)

..... (Seal)

..... (Seal)

Endorsed:

Contract between the Pacific Machinery Co.
and

Filed January 4, 1916.

G. H. MARSH, Clerk.

DEFENDANT'S EXHIBIT 5.

SPECIFICATIONS OF SAW MILL MACHINERY FOR THE
OREGON CITY LUMBER & MFG. Co.

FROM

PACIFIC MACHINERY Co.

49 First Street,

Portland, Oregon.

All gears, sprocket wheels, couplings, pulleys
and friction wheels are to be keyseated and care-
fully fitted to shafts in the proper location, and
furnished with keys, and the shafting is to be prop-
erly keyseated for the fitting of the above gears and
sprockets.

All sprocket wheels are to be of the heavy web
or plate center type sprocket patterns used are to
be perfect in pitch, so as not to unduly strain the
chain.

All shafting is to be turned and ground steel, not cold roll.

The journal bearing boxes furnished are to be of what is termed an extra heavy pattern, having heavy substantial bases, and equipped with a good grade of bearing metal and holding down bolts for caps.

All chain is to be of the heated type, and of the genuine Moline make, which chain is the heaviest and strongest manufactured.

All couplings furnished are to be of a strong, neat design and of a safety pattern, and are to be equipped with turned coupling bolts with Hexigon heads. The couplings are to be both keyed and shrunk, and entire shafts are to be put in lathes so that couplings may be machined after they are put on shaft, in this way making them absolutely true.

All gear wheels and pinions furnished to be of heavy pattern and most carefully designed so as to allow the maximum amount of wear, and duplicates will at all times be carried in stock so as to replace worn gears.

All paper frictions are to be of Rockwood type, being equipped with sleeves and having the loose flange keyed to sleeve. Tarred fibre paper is to be used put together under forty tons hydraulic pressure so as to assure great wearing qualities. Paper fillers for friction will be carried in stock so as to avoid delay and expense in replacing worn frictions.

HOG OR EDGING GRINDER.

- 1 No. 4A Mitts & Merrill Hog or Edging Grinder complete with all regular catalog trimmings.

VERTICAL ENGINE.

- 1 5-H. P. Sterling Vertical Engine complete with all regular trimmings, including Gardner Governor with automatic device for stopping engine in case of breakage of Governor Belt, Governor Pulley, Oil Cups, Throttle Valve, Cylinder Lubricator, Belt Pulley, and Balance Wheel.

LATH MILL AND BOLTER.

- 1 Combination lath mill and bolter with a capacity of 40 to 45 M. Lath machine to be manufactured by Bartlett & Company, Saginaw, Mich., and to be furnished complete ready for operation, including six saws.

LATH BINDER AND TRIMMER.

- 1 Combination lath binder and trimmer complete except saws.

PRESCOTT AUTOMATIC UNDERCUT TRIMMER.

- 1 Prescott 14 Saw Undercut Trimmer complete with all necessary iron work and all necessary wood work and 476' of table chains. The trimmer is to be a self-contained machine operated by locking foot treadles located at either end of table or by hand levers as desired.

Saw ladders are equipped with adjustable

yoke boxes so that as the belts stretch they may be adjusted accordingly.

The main shaft with pulleys is to be 2 $\frac{3}{16}$ " in diameter and to be run at a speed of 600 R. P. M.

The Arbor Pulley is to be 16" in diameter and have a 13" face, and the machine is designed for the use of 6" belts but no belts or saws will be furnished.

The head shaft is also to be 2 $\frac{3}{16}$ " in diameter, with boxes, collars, and sprockets, and the tail shaft is to be 1 $\frac{15}{16}$ " in diameter complete with boxes, collars, and sprockets (and the tail shaft is to be 1 $\frac{15}{16}$ " in diameter complete with boxes, collars and sprockets).

The framework is to be made of the most substantial construction, in which 6x6 stock will be used and the table top is to be made of 2x12 stock.

The feed rig is to consist of a heavy 32x4 Spur Gear fitted to a shaft 2 $\frac{7}{16}$ x4' long, equipped with boxes and collars and drive sprocket.

The intermediate shaft is to be 2 $\frac{7}{16}$ in diameter by 4' long, to which will be fitted a heavy 32x8 Spur Iron Friction, shaft to be complete with collars and boxes and 8x4 Spur Pinions.

The third shaft of the feed rig is to be 2 $\frac{7}{16}$ x5' and fitted to it will be 4x8 Spur Paper Friction and an 8x9 Paper Friction and a 24x9 Pulley, and it is to be complete with sliding boxes for throwing boxes in and out.

The trimmer will be arranged to operate at a speed of 80' per minute unless you desire this speed changed and is to be in accordance with cut and description on page 116 of Prescott General Saw Mill Machinery Catalog No. 5.

Blue prints of working drawings of this machine will be furnished to assist in the installation.

SLASHER.

1 Heavy Pacific Coast Type Slab Slasher for 7 saws spaced 4' 1" centers.

The Arbor is to be constructed of the best turned and ground steel and is to be 2 15/16" in diameter and equipped with seven pairs of heavy coupling collars for slasher saws.

Eight heavy adjustable slasher arbor boxes are to be furnished as well as the necessary collars.

The drive pulley is to be 20" in diameter and for a 16" belt. It is to be of the heavy web center construction, carefully machined both inside and out and perfectly balanced and fitted to Arbor.

Head shaft for operating the floor chains is to be of turned and ground steel 2 7/16" in diameter and 30' long, made in two lengths of 10' and 20' each, and equipped with heavy safety flange coupling both keyed and shrunk into place and equipped with turned coupling bolts. The head shaft is to be keyseated and fitted with 14 heavy web center sprockets for No. 74 healed type chains,

having 12 teeth each, and one heavy drive sprocket for No. 82 healed type chain having 26 teeth.

With the Slasher will also be furnished 14 heavy web center sprockets for No. 74 healed type chain, each having 12 teeth and bored for $1\frac{7}{16}$ " shaft and keyseated standard. Also 150 lineal feet of $\frac{1}{4}$ "x3" flat iron with $\frac{1}{4}$ " screw holes drilled and countersunk on 12" centers.

Included with the machine will be a heavy drive rig, consisting of 36"x6" spur iron friction wheel, fitted to a $2\frac{7}{16}$ "x7' 3" shaft, also 10 tooth sprocket wheel for No. 82 healed type chain, fitted to this shaft, and shaft furnished with necessary journal bearings and collars. Second shaft to be $1\frac{15}{16}$ "x7' 3" and equipped with 8x7 spur paper friction with necessary lighting boxes and safety set collars.

Our Slasher is a machine designed especially for the Pacific Coast service and one which we have had in operation for a great many years past in some of the largest mills on the Pacific Coast.

SECTION 24.

- 1 Shaft $2\frac{15}{16}$ "x4' 8" keyseated.
- 1 5-Tooth Expansion Sprocket Wheel for $\frac{7}{8}$ "x6 Long Link Conveyor Chain fitted to above shaft.
- 1 Spur Gear 63 teeth, $1\frac{1}{2}$ " pitch, 4" face, bore $2\frac{15}{16}$ " keyseated and fitted.
- 1 Shaft $2\frac{7}{16}$ "x5' 3" keyseated.
- 1 Spur pinion 13 teeth, $1\frac{1}{2}$ " pitch, bore $2\frac{7}{16}$ " keyseated and fitted.

- 1 36x8x2 7/16" Bevel Iron Friction Wheel, key-seated and fitted.
- 1 Shaft 2 7/16x11' 6" keyseated.
- 1 12x9x2 7/16 Bevel Paper Friction Wheel key-seated and fitted.
- 1 2 7/16"x4' Shaft keyseated.
- 2 20x20 double out end conveyor drums keyseated and fitted.
- 1 Shaft 2 15/16"x4' keyseated.
- 1 20x20 double out end conveyor drum keyseated and fitted.
- 200' of 7/8x6 genuine eastern made hand, hand welded, tested and warranted, long length conveyor chain, made of double refined iron.

SECTION 29.

- 1 Shaft 1 15/16x4' 6" keyseated.
- 3 15 tooth sprocket wheels for No. 78 riveted chain, keyseated and fitted.
- 30' of 1/4"x3 1/2" Flat Iron with 1/4" screw holes.
- 2 1 15/16 sprocket wheel for No. 78 chain keyseated and fitted.

SECTION 26.

- 1 Shaft 1 15/16x7' keyseated.
- 1 Spur paper friction wheel 6"x7"x1 11/16" keyseated and fitted.
- 1 1 15/16" Eccentric Box.
- 1 36x6x2 7/16 Spur Iron Friction Wheel keyseated and fitted.
- 1 10 tooth sprocket wheel for No. 78 riveted chain keyseated and fitted.

- 1 Shaft 2 7/16"x5' keyseated.

SECTION 28.

- 1 Shaft 2 7/16"x3' 6" keyseated.
- 1 9 tooth sprocket wheel for No. 104 chain, bore 2 7/16".
- 1 Bevel gear 55 teeth 1 1/4" pitch, 3 3/4" face, bore 2 7/16" keyseated and fitted.
- 1 Shaft 1 15/16"x6' keyseated.
- 1 Bevel pinion 14 teeth 1 1/4" pitch, 3 3/4" face, bore 1 15/16" keyseated and fitted.
- 1 Shaft 1 15/16"x3' keyseated.
- 1 9 tooth sprocket wheel for 104 chain, bore 2 7/16".

SECTION 37.

- 1 Shaft 2 7/16x3' keyseated.
- 1 Spur gear 60 teeth 1 1/4" pitch, 3" face, bore 2 7/16" keyseated and fitted.
- 1 9 tooth No. 104 chain sprocket, bore 2 7/16" keyseated and fitted.
- 1 Shaft 1 15/16"x3' 6" keyseated.
- 1 Spur pinion 12 tooth 1 1/4" pitch, 3 1/4" face, bore 1 15/16" keyseated.
- 1 Shaft 2 7/16"x4' keyseated.
- 1 9-tooth sprocket wheel for No. 104 chain 1 15/16" keyseated and fitted.
- 1 9-tooth sprocket wheel for No. 104 chain, bore 2 7/16" keyseated and fitted.
- 1 Spur gear 60 tooth 1 1/4" pitch, 3" face, bore 2 7/16" keyseated and fitted.
- 1 Shaft 1 15/16x5' keyseated.

- 1 Spur pinion 15 tooth $1\frac{1}{4}$ " pitch, $3\frac{1}{4}$ " face, bore $1\frac{15}{16}$ " keyseated.
- 2 9-tooth sprockets for No. 104 chain, bore $1\frac{15}{16}$ " keyseated and fitted.

SECTION 6.

- 1 Shaft $2\frac{7}{16}$ "x4' keyseated.
- 1 9-tooth sprocket wheel for No. 104 chain, bore $2\frac{7}{16}$ " keyseated and fitted.
- 1 Spur Gear 60 tooth $1\frac{1}{4}$ " pitch, face 3", bore $2\frac{7}{16}$ " keyseated and fitted.
- 1 Shaft $1\frac{15}{16}$ "x4" keyseated.
- 1 Spur Pinion 15 tooth $\frac{1}{4}$ " pitch, $3\frac{1}{4}$ " face, bore $1\frac{15}{16}$ ", keyseated and fitted.
- 1 9-tooth sprocket wheel for No. 104 chain, bore $1\frac{15}{16}$ " keyseated and fitted.

SECTION 36.

- 1 Shaft $1\frac{15}{16}$ "x7' 8" keyseated.
- 1 Shaft $2\frac{7}{16}$ "x22' 6" keyseated.
- 3 15 tooth No. 78 chain sprockets, bore $2\frac{7}{16}$ keyseated and fitted.
- 1 Spur gear 60-tooth $1\frac{1}{4}$ " pitch, 3" face, bore $2\frac{7}{16}$ " keyseated and fitted.
- 1 Shaft $2\frac{7}{16}$ x7' 8" keyseated.
- 1 Spur Pinion 15 tooth $1\frac{1}{4}$ " pitch, $3\frac{1}{2}$ " face, bore $2\frac{7}{16}$ " keyseated and fitted.
- 1 24x6x1 $1\frac{15}{16}$ " Spur Iron Friction keyseated and fitted.
- 1 16x6x1 $1\frac{15}{16}$ " Phillips Steel Pressed Pulley.
- 1 $1\frac{15}{16}$ " Eccentric Box.

- 1 8x7x1 15/16 Spur Paper Friction keyseated and fitted.

SECTION 40.

- 1 80' of 2 15/16" shaft in four lengths coupled together with three pair of 2 15/16" safety flange couplings.
- 2 Shafts 2 7/16"x20' coupled together with one pair of 2 7/16" safety flange couplings, and coupled to above length of 2 15/16" shaft with 2 15/16x 2 7/16 reducing safety flange coupling.
- 1 36" sprocket wheel for No. 124 chain keyseated and fitted.
- 3 Bevel Pinions 14 tooth 1 1/4" pitch, 3 3/4" face, bore 2 7/16" keyseated and fitted.
- 3 Shafts 2 7/16"x5' keyseated.
- 3 Bevel gears 55 teeth, 1 1/4" pitch, 3 3/4" face, bore 2 7/16" keyseated and fitted.
- 3 Shafts 1 15/16"x16' keyseated.
- 6 12-tooth sprocket wheels for No. 74 chain, bore 2 7/16" keyseated and fitted.
- 3 12-tooth sprocket wheel for No. 74 chain, bore 2 7/16" keyseated and fitted.
- 1 12-tooth sprocket wheel for No. 78 chain, bore 1 15/16" keyseated and fitted.
- 3 12-tooth sprocket wheels for No. 78 chain, bore 1 7/16" keyseated and fitted.

SECTION 18.

- 1 Shaft 2 7/16"x7' 6" keyseated.
- 1 36"x8"x2 7/16" spur iron friction wheel keyseated and fitted.

- 1 12-tooth sprocket wheel for No. 124 chain, bore 2 7/16" keyseated and fitted.
- 1 Shaft 2 7/16"x8' keyseated.
- 1 12x9x2 7/16" spur paper friction, keyseated and fitted.

WOOD SAW.

- 1 Pacific Coast Standard Wood Saw Machine, for cutting 4' slabs into 16" lengths. Machine is to be in accordance with blue print from working drawing attached hereto.

The arbor is to be made of the best of turned and ground steel and is to be a 2 15/16" in diameter and 8' 11" long, made in three sections, and equipped with two pairs of heavy coupling collars, shrunk onto arbor and then carefully turned up, so as to be in perfect balance. The arbor is to be furnished with three heavy 2 15/16" post boxes and two safety set collars. The arbor pulley is to be 24" in diameter and for a 10" belt, and is to be of the heavy web center construction, carefully machined on both inside and outside, and accurately balanced.

There is also to be a 10"x6" C. I. D. B. Pulley for operating drive rig.

The head shaft is to be 1 15/16" in diameter and 8' 2" in length and equipped with six 11-tooth No. 74 chain sprockets and one 30-tooth No. 74 chain drive sprocket. With the head shaft will be furnished three 1 15/16" Post Boxes.

The tail shaft is to be 1 7/16" in diameter and 4' 5" in length and equipped with one 11-tooth No. 74 chain sprocket keyed and fitted, and five 11-tooth

No. 74 chain sprockets set screwed so as to allow for uneven wear of chain. Tail shaft is to be provided with four 1 7/16"x1 3/4" sliding boxes, each faced on one end, and eight 1 7/16" Safety Set Collars.

With the iron works will be furnished 34' of 1/8x1 1/2" rolled iron drilled and countersunk.

The drive rig is to consist of one shaft 1 15/16"x 4' keyseated and equipped with one 30x6x1 15/16" Spur Iron Friction Wheel, and a 11-tooth No. 78 Chain Drive Sprocket and two 1 15/16" Plain Journal Bearing Boxes.

One shaft 1"x4' keyseated and equipped with one 30x6x1 C. I. Pulley, one 6x7x1 7/16" Spur Paper Friction Wheel and furnished with 1 15/16" Sliding Box, one 1 15/16" journal bearing box and one 1 15/16" Safety Set Collar.

Wood Saw Machinery is to be of our standard type, which has been in successful operation for many years in Pacific Coast Service. With the machine will be furnished 80' of No. 74 Riveted Chain and 7' of No. 74 "A" attachment.

CHAIN.

200' of No. 78 Chain.

180' of No. 104 & C Chain.

320' of No. 104 and C Chain.

40' of No. 124 Chain.

900' of No. 74 Chain.

90' of No. 78 Chain (Sec. 24).

90' of No. 104 and C Chain (Sec. 37).

300' of No. 74 Chain with "N" attachment every third link (Slasher).

25' of No. 82 Riveted Chain.

Filed January 4, 1916.

G. H. MARSH, Clerk.

DEFENDANT'S EXHIBIT 6.

Sheet No. A297.

Order No.

Shipped via

PACIFIC MACHINERY Co.

49 First Street.

Manufacturers and Dealers in

MACHINERY AND MILL SUPPLIES.

SOLD TO

Oregon City Lbr. & Mfg. Co.,

Oregon City, Ore.

Portland, Ore., June 10-09.

Terms: No goods to be returned without first getting permission. Claims for shortage must be made within ten days from date of invoice.

10	2	7/16 flat boxes	\$23.00
4	2	15/16 do	13.00
22	2	7/16 set collars	15.84
		Draying25

\$52.09

168 *F. T. Meyer vs. Pacific Machinery Co.*

Sheet No. A302.

Order No.

Shipped via

PACIFIC MACHINERY Co.,
49 First Street.

Manufacturers and Dealers in
MACHINERY AND MILL SUPPLIES.

SOLD TO

Oregon City Lbr. & Mfg. Co.,
Oregon City, Ore.

Portland, Ore., June 15-09.

Terms: No goods to be returned without first getting permission. Claims for shortage must be made within ten days from date of invoice.

5' 1 15/16 wood pulley bushing at 12c.....\$.60

Sheet No. A312.

Order No. Mr. Johnson.

Shipped via

PACIFIC MACHINERY Co.,
49 First Street.

Manufacturers and Dealers in
MACHINERY AND MILL SUPPLIES.

SOLD TO

Oregon City Lbr. & Mfg. Co.,
Oregon City, Ore.

Portland, Ore., June 24-09.

Terms: No goods to be returned without first getting permission. Claims for shortage must be made within ten days from date of invoice.

1 Shaft 1 15/16x20' 206# at 3.50.....	\$ 7.21
1 " 1 15/16x11' 114# at 3.85+40c cutting off	4.79
	<hr/> \$12.00

Sheet No. A317.

Order No. P. S. M. D. 839.

Shipped via

PACIFIC MACHINERY Co.,
49 First Street.

Manufacturers and Dealers in
MACHINERY AND MILL SUPPLIES.

SOLD TO
Oregon Lbr. & Mfg. Co.,
Oregon City, Ore.

Portland, Ore., June 24-09.

Terms: No goods to be returned without first getting permission. Claims for shortage must be made within ten days from date of invoice.

180' #78 riveted chain	\$60.75
90 Attachments B for above	11.51
20' #87 riv chain	11.75
5 Sheets red friction paper 51 lbs. at 12c..	6.12
	<hr/> \$90.13

170 *F. T. Meyer vs. Pacific Machinery Co.*

Sheet No. A305.

Order No. P. S. M. D. 200.

Shipped via

PACIFIC MACHINERY Co.,
49 First Street.
Manufacturers and Dealers in
MACHINERY AND MILL SUPPLIES.

SOLD TO
Oregon City Lbr. & Mfg. Co.,
Oregon City, Ore.

Portland, Ore., June 25-09.

Terms: No goods to be returned without first getting permission. Claims for shortage must be made within ten days from date of invoice.

1	16x6x3 15/16 W. S. Pulley.....	\$ 2.60
1	14x8x3 15/16 do	2.72
1	12x8x3 15/16 do	2.32
1	8x6x3 15/16 do	1.48
1	12x8x2 15/16 S. S. Pulley.....	3.12
2	10x6x2 15/16 do	5.02
1	40x8x2 7/16 do	15.39
1	30x12x2 7/16 do	13.37
1	26x10x2 7/16 do	9.24
1	24x10x2 7/16 do	8.47
2	24x8x2 7/16 do	14.26
1	20x10x2 7/16 do	6.48
1	18x8x2 7/16 do	5.02
1	16x10x2 7/16 S. S. Pulley 5.10 — 1 8x6x	
	2 7/16 W. S. Pul.	6.58

\$96.07

Sheet No. A322.

Order No. P. S. M. D. 999.

Shipped via

PACIFIC MACHINERY Co.,

49 First Street.

Manufacturers and Dealers in

MACHINERY AND MILL SUPPLIES.

SOLD TO

Oregon City Lbr. & Mfg. Co.,

Oregon City, Ore.

Portland, Ore., July 2, '09.

Terms: No goods to be returned without first getting permission. Claims for shortage must be made within ten days from date of invoice.

2	2 7/16 set collars	\$1.80
4	2 7/16 W. P. Bushing48
1	Shaft 1 15/16x7' 3" K. S.....	4.06
		<hr/>
		\$6.34

Sheet No. A341.

Order No.

Shipped via

PACIFIC MACHINERY Co.,

49 First Street.

Manufacturers and Dealers in

MACHINERY AND MILL SUPPLIES.

SOLD TO

Oregon City Lbr. & Mfg. Co.,

Oregon City, Ore.

Portland, Ore., July 13-09.

Terms: No goods to be returned without first

getting permission. Claims for shortage must be made within ten days from date of invoice.

1 32x8 Phillips' steel split pulley.....	\$10.45
1 Box — 55 lbs. Sterling Babbitt at 25c....	13.75
10' #74 Chain—"N" attachments every other link	2.84
	<hr/>
	\$27.04

Sheet No. A346.

Order No. Mr. Keller.

Shipped via

PACIFIC MACHINERY Co.,
49 First Street.
Manufacturers and Dealers in
MACHINERY AND MILL SUPPLIES.
SOLD TO
Oregon City Lbr. & Mfg. Co.,
Oregon City, Ore.

Portland, Ore., July 17-09.

Terms: No goods to be returned without first getting permission. Claims for shortage must be made within ten days from date of invoice.

1 3 15/16 flat box babbitted	\$ 5.75
12 1 15/16 Safety set collars.....	8.40
6 2 7/16 do	5.40
	<hr/>
	\$19.55

Sheet No. A357.

Order No. Mr. Keller.

Shipped via

PACIFIC MACHINERY Co.,
49 First Street.
Manufacturers and Dealers in
MACHINERY AND MILL SUPPLIES.

SOLD TO

Oregon City Lbr. & Mfg. Co.,
Oregon City, Ore.

Portland, Ore., July 22-09.

Terms: No goods to be returned without first getting permission. Claims for shortage must be made within ten days from date of invoice.

1 14x6 steel split pulley—Phillips'.....\$3.32

Sheet No. A362.

Order No. Mr. Keller.

Shipped via

PACIFIC MACHINERY Co.,
49 First Street.
Manufacturers and Dealers in
MACHINERY AND MILL SUPPLIES.

SOLD TO

Oregon City Lbr. & Mfg. Co.,
Oregon City, Ore.

Portland, Ore., July 29-09.

Terms: No goods to be returned without first getting permission. Claims for shortage must be made within ten days from date of invoice.

174 *F. T. Meyer vs. Pacific Machinery Co.*

2	16x4x1	15/16	Phillips steel pulleys.....	\$6.21
1	10x4x1	15/16	do	2.19
1	6x3x1	15/16	wood pulley	1.16
				<hr/>
				\$9.56

Sheet No. A370.

Order No. Mr. Nickerson.

Shipped via

PACIFIC MACHINERY Co.,
49 First Street.
Manufacturers and Dealers in
MACHINERY AND MILL SUPPLIES.
SOLD TO
Oregon City Lumber & Mfg. Co.,
Oregon City, Ore.

Portland, Ore., Aug. 6-09.

Terms: No goods to be returned without first getting permission. Claims for shortage must be made within ten days from date of invoice.

8	1	7/16	set collars	\$ 4.00
10	1	7/16	solid boxes at 80c.....	8.00
6	1	15/16	flat boxes	9.30
				<hr/>
				\$21.30

Sheet No. A411.

Order No. 4141.

Shipped via

PACIFIC MACHINERY Co.,

49 First Street.

Manufacturers and Dealers in

MACHINERY AND MILL SUPPLIES.

SOLD TO

Oregon City Lumber & Mfg. Co.,

Oregon City, Ore.

Portland, Ore., 8-31-09.

Terms: No goods to be returned without first getting permission. Claims for shortage must be made within ten days from date of invoice.

5 2 7/16 flat boxes\$11.50

1 2 7/16 eccentric box 7.25

\$18.75

Sheet No. A356.

Order No. 2148.

Shipped via

PACIFIC MACHINERY Co.,

49 First Street.

Manufacturers and Dealers in

MACHINERY AND MILL SUPPLIES.

SOLD TO

Oregon City Lumber & Mfg. Co.,

Oregon City, Ore.

Portland, Ore., 9-9-09.

Terms: No goods to be returned without first getting permission. Claims for shortage must be made within ten days from date of invoice.

1 6x7½—10 1 P Sterling Vertical Engine
with Reg. Trimming's Exchange for 4x5
Engine which will be returned to Seattle
freight paid. 10 H. P. Engine is to be
F.O.B. Seattle, 4x5 Engine to be new....\$45.00

Filed January 4, 1916.

G. H. MARSH, Clerk.

DEFENDANT'S EXHIBIT 8.

KNOW ALL MEN BY THESE PRESENTS,
That the Oregon City Lumber & Manufacturing
Company, a corporation, party of the first part, for
and in consideration of the payment of the sum
of One Dollar (\$1.00), and other good and valuable
considerations, do hereby bargain, sell, transfer,
and deliver unto John J. Cooke and J. W. Moffatt,
parties of the second part, the following described
property, namely: That certain indenture of lease
from the Crown Columbia Pulp & Paper Company
to the party of the first part, to certain real estate
situated in the Northerly part of Oregon City,
Clackamas County, Oregon; also that certain mill
property, including all buildings and machinery,
situate on the property so leased by the party of
the first part, together with all stock on hand and
all other assets of whatsoever name and nature
now owned by the party of the first part wherever
situate in its possession or to which it is entitled
in law or equity.

TO HAVE AND TO HOLD the same unto the

parties of the second part, their assigns and personal representatives forever, IN TRUST, nevertheless, for the uses and purposes following:

First: To make an inventory of said assets.

Second: To insure the same.

Third: To sell and dispose of said property by retail sales or in bulk as they may deem best.

Fourth: To operate the said mills as they may deem best and to defray the actual and necessary expenses in so doing.

Fifth: To defray the actual and necessary expenses in carrying out the provisions of this trust.

Sixth: To pay all liens and preferred claims against the party of the first part as well as all liens upon the property belonging to it.

Seventh: To pay all creditors in full, if sufficient funds be realized for that purpose, and if not, then to pay the same pro rata in accordance with the amount of their respective claims and demands.

Eighth: To return the surplus, if any, to the party of the first part.

IN WITNESS WHEREOF the party of the first part has signed this document pursuant to the order of the directors heretofore made and entered and set its seal this 28th day of October, 1909.

OREGON CITY LUMBER &
MANUFACTURING COMPANY,

By W. G. Bohn, President.

(Corporate seal)

By C. S. Keller, Secretary.

In the presence of:

C. D. Latourette,

W. A. Dimick.

Endorsed: Trust Deed, Oregon City L. & Mfg.
Co. to John J. Cooke and J. W. Moffit.

STATE OF OREGON, }
County of Clackamas. } ss.

I, C. E. Ramsby, County Recorder, in and for
said county, do hereby certify that the within in-
strument of writing was received for record at 8
o'clock a. m. on the 29th day of Oct., 1909, and
recorded on page 205 in Book 3 Record of Miscel.
of said county and state.

Witness my hand and seal of office affixed.
(Seal County Recorder) C. E. RAMSBY,
Recorder.

Filed Nov. 10, 1909.

F. W. GREENMAN, Clerk.
By W. L. Mulvey, Deputy.

Filed January 4, 1916.

G. H. MARSH, Clerk.

DEFENDANT'S EXHIBIT, JUDGMENT ROLL
No. 5205.

*In the Circuit Court of the United States for the
District of Oregon.*

OCTOBER TERM, 1911.

Be it remembered, That on the 28th day of Sep-

tember, 1911, there was duly filed in the Circuit Court of the United States for the District of Oregon, a Bill in Equity, in words and figures as follows, to-wit:

*In the Circuit Court of the United States for the
District of Oregon.*

No. —

IN EQUITY.

THE PACIFIC MACHINERY COMPANY, a
corporation,

Plaintiff,

v.

THE OREGON CITY LUMBER AND MANUFACTURING
COMPANY, a corporation, JOHN W.
MOFFITT, and JOHN J. COOKE, as assignees
of The Oregon City Lumber and Manufacturing
Company, and F. T. MEYER,

Defendants.

To the Honorable Judge of the Circuit Court of the
United States for the District of Oregon:

The Pacific Machinery Company, a corporation created by, and organized under and by virtue of the laws of the State of Washington, and a citizen and resident thereof, having its office and principal place of business at Seattle, Washington, brings this its bill against the Oregon City Lumber and Manufacturing Company, a corporation created by and existing under and by virtue of the laws of the State of Oregon, and a citizen of Oregon, residing

at Oregon City, Oregon; John W. Moffitt, a resident of Oregon City, Oregon, and a citizen of the State of Oregon; John J. Cooke, a resident of Oregon City, Oregon, and a citizen of the State of Oregon; and F. T. Meyer, a resident of Oregon City, Oregon, and a citizen of the State of Oregon, and thereupon your orator complains and says:

I.

That on or about April 29, 1909, the said complainant offered to sell to the Oregon City Lumber and Manufacturing Company, a certain bill of machinery, a list of which, marked Exhibit A, is attached to this bill and made a part thereof, for the sum of \$4695.00, terms to be \$1500 cash, balance to be paid in equal installments of three, four, and five months, dating from shipment of machinery, notes to be given for deferred payments bearing interest at 8%, transaction to be secured by conditional sale contracts.

II.

That said offer was accepted in terms as aforesaid by the Oregon City Lumber and Manufacturing Company and that said machinery was delivered to the said Oregon City Lumber and Manufacturing Company by your complainant herein.

III.

That notwithstanding the promises and undertakings of the said Oregon City Lumber and Manufacturing Company, as above set forth, the said

Oregon City Lumber and Manufacturing Company have never complied with the conditions of their contract, in that they have not paid the sum of \$1500, nor executed the conditional sale contracts as aforesaid, though demand that they so do was and has often been made upon the said company.

IV.

That on account and by reason of the above facts your complainant has during all the times herein mentioned claimed an equitable lien upon the said property.

V.

That on or about November 10, 1909, the said Oregon City Lumber and Manufacturing Company made an assignment for the benefit of the creditors to John J. Cooke and John W. Moffitt.

VI.

That said defendants John J. Cooke and John W. Moffitt, as assignees of the Oregon City Lumber and Manufacturing Company on the 20th of April, 1911, assumed to sell all the property of the said company, including the property scheduled in Exhibit A, at an assignee sale in Oregon City, though well knowing the claim of the complainant to the property listed in Exhibit A hereto attached.

VII.

That said property was declared sold to the defendant F. T. Meyer, who was informed and had

notice that the complainant claimed an equitable lien thereon.

VIII.

That the said F. T. Meyer refuses to deliver the said property to this complainant or to render an account thereof.

IX.

That the said property is reasonably worth greatly in excess of \$2000.00.

WHEREFORE, plaintiff prays that this honorable court decree that the defendant F. T. Meyer holds the said property as trustee for this defendant, and that the defendants Oregon City Lumber and Manufacturing Company, and John J. Cooke and John W. Moffitt have no further interest therein; and that this honorable court grant the complainant such other and further relief as may seem meet; and

This complainant further prays that a subpoena may issue to the defendants, Oregon City Lumber and Manufacturing Company, John J. Cooke, John W. Moffitt, and F. T. Meyer, requiring them to appear and answer the allegations of this bill, but not under oath, the oath being waived.

IRA BRONSON,
Counsel for Plaintiff.

STATE OF WASHINGTON,	ss.
County of King.	

E. I. Garrett, being first duly sworn, on oath deposes and says: that he is the treasurer of the

Pacific Machinery Company, plaintiff in the above entitled action; that he has read the foregoing bill of complaint, knows the contents thereof and believes the same to be true.

E. I. GARRETT.

Subscribed and sworn to before me this 21st day of September, 1911.

(Seal)

IRA BRONSON,

Notary Public in and for the State of
Washington residing at Seattle.

EXHIBIT A.

- 1 11x14 Beck Type Engine Feed.
- 1 No. 4A Mitts & Merrill Hog or Edging Grinder complete.
- 1 5 H. P. Sterling Vertical Engine complete with all regular trimmings.
- 1 Combination lath mill and bolter with a capacity of 40 to 45 M. Bartlett & Company. Including six saws.
- 1 Combination lath binder and trimmer complete except saws.
- 1 Prescott 14 Saw Undercut Trimmer complete with all necessary iron work and all necessary wood work and 476' of table chains.
- 1 Heavy Pacific Coast Type Slab Slasher for 7 saws spaced 4' 1" centers. Including heavy drive rig.
- 1 Shaft 2 15/16x4' 8" keyseated.
- 1 5 Tooth Expansion Sprocket Wheel for 7/8x6 Long Length Conveyor Chain fitted to above shaft.

- 1 Spur Gear 63 teeth, $1\frac{1}{2}$ " pitch, 4" face, bore $2\frac{15}{16}$ " keyseated and fitted.
- 1 Shaft $2\frac{7}{16}$ "x $5\frac{3}{4}$ " keyseated.
- 1 Spur Pinion 13 teeth, $1\frac{1}{2}$ " pitch, bore $2\frac{7}{16}$ " keyseated and fitted.
- 1 $36\times 8\times 2\frac{7}{16}$ " Bevel Iron Friction Wheel keyseated and fitted.
- 1 Shaft $2\frac{7}{16}$ "x11' 6" keyseated and fitted.
- 1 $12\times 9\times 2\frac{7}{16}$ " Bevel Paper Friction Wheel keyseated and fitted.
- 1 $2\frac{7}{16}$ "x4'.
- 2 20×20 double out end conveyor drum keyseated and fitted.
200' of $\frac{7}{8}$ "x6" genuine eastern made hand, hand welded, tested and warranted, long length conveyor chain, made of double refined iron.
- 1 Shaft $1\frac{15}{16}$ "x4' 6" keyseated.
- 3 15 Tooth Sprocket Wheels for No. 78 Riveted Chain, keyseated and fitted.
30' of $\frac{1}{4}$ "x $3\frac{1}{2}$ " Flat Iron with $\frac{1}{4}$ " screw holes.
- 2 Sprockets 15 tooth No. 78 fitted—2 shaft $1\frac{7}{16}$ "x12".
- 1 Shaft $1\frac{15}{16}$ "x7' keyseated and fitted.
- 1 Spur Paper Friction Wheel 6"x7"x $1\frac{15}{16}$ " keyseated and fitted.
- 1 Shaft $2\frac{7}{16}$ "x22' 6" keyseated.
- 3 15 tooth No. 78 chain sprockets, bore $2\frac{7}{16}$ " keyseated and fitted.
- 1 Spur gear 60 tooth, $1\frac{1}{4}$ " pitch, 3" face, bore $2\frac{7}{16}$ " keyseated and fitted.
- 1 Shaft $2\frac{7}{16}$ "x7' 8" keyseated.

- 1 Spur Pinion 15 tooth, $1\frac{1}{4}$ " pitch, $3\frac{1}{2}$ " face, bore 2 $\frac{7}{16}$ keyseated and fitted.
- 1 24x6x1 $\frac{15}{16}$ " Spur Iron Friction Wheel keyseated and fitted.
- 1 Shaft 1 $\frac{15}{16}$ x7' 8" keyseated.
- 1 8x7x1 $\frac{15}{16}$ " Spur Paper Friction keyseated and fitted.
- 1 16x6x1 $\frac{15}{16}$ " Phillips Steel Pressed Pulley keyseated and fitted.
- 1 1 $\frac{15}{16}$ " Eccentric Box.
- 1 80' of 2 $\frac{15}{16}$ " shaft in four lengths coupled together with three pair of 2 $\frac{15}{16}$ " safety flange couplings.
- 2 Shafts 2 $\frac{7}{16}$ "x20' coupled together with one pair of 2 $\frac{7}{16}$ safety flange couplings, and coupled to above length of 2 $\frac{15}{16}$ " shaft with 1 $\frac{15}{16}$ "x 2' $\frac{7}{16}$ reducing safety flange coupling.
- 1 36" sprocket wheel for No. 124 chain keyseated and fitted.
- 3 Bevel pinions, 14 tooth, $1\frac{1}{4}$ " pitch, $3\frac{3}{4}$ " face, bore 2 $\frac{7}{16}$ " keyseated and fitted.
- 3 Shafts 2 $\frac{7}{16}$ "x5' keyseated.
- 3 Bevel Gears, 55 teeth, $1\frac{1}{4}$ " pitch, $3\frac{3}{4}$ " face, bore 2 $\frac{7}{16}$ keyseated and fitted.
- 3 Shafts 1 $\frac{15}{16}$ x16' keyseated.
- 6 12 tooth sprocket wheels for No. 74, bore 1 $\frac{15}{16}$. Keyseated and fitted.
- 3 12 tooth sprocket wheels for No. 74 chain, bore 1 $\frac{15}{16}$ " keyseated and fitted.
- 1 12 tooth sprocket wheel for No. 78 chain, bore 1 $\frac{15}{16}$ " keyseated and fitted.

- 3 12 tooth sprocket wheels for No. 78 chains, bore 1 $\frac{7}{16}$, keyseated.
- 1 Shaft 2 $\frac{7}{16}$ "x7' 6" keyseated.
- 1 36"x8"x2 $\frac{7}{16}$ " spur iron friction wheel keyseated and fitted.
- 1 12 tooth sprocket wheel for No. 124 chain, bore 2 $\frac{7}{16}$ " keyseated and fitted.
- 1 10 Tooth Sprocket Wheel for No. 78 Riveted Chain keyseated and fitted.
- 1 Shaft 2 $\frac{7}{16}$ " 5' keyseated.
- 1 1 $\frac{15}{16}$ " Eccentric Box.
- 1 36x6x2 $\frac{7}{16}$ Spur Iron Friction Wheel keyseated and fitted.
- 1 Shaft 2 $\frac{7}{16}$ "x3' 6" keyseated.
- 1 9 Tooth Sprocket Wheel for No. 104 Chain, bore 2 $\frac{7}{16}$ ".
- 1 Bevel Gear 55 Teeth, $1\frac{1}{4}$ " pitch, $3\frac{3}{4}$ " face, bore 2 $\frac{7}{16}$ keyseated and fitted.
- 1 Shaft 1 $\frac{15}{16}$ "x6' keyseated.
- 1 Bevel Pinion 14 teeth, $1\frac{1}{4}$ " pitch, $3\frac{3}{4}$ " face, bore 1 $\frac{15}{16}$ " keyseated and fitted.
- 1 Shaft 1 $\frac{15}{16}$ "x3'.
- 1 9 Tooth Sprocket Wheel for No. 104 chain, bore 1 $\frac{15}{16}$ ", keyseated and fitted.
- 1 Shaft 2 $\frac{7}{16}$ "x4' keyseated.
- 1 9 tooth sprocket wheel for No. 104 chain, bore 2 $\frac{7}{16}$ " keyseated and fitted.
- 1 Spur Gear 60 tooth, $1\frac{1}{4}$ " pitch, $3\frac{1}{4}$ " face, bore 1 $\frac{15}{16}$ " keyseated and fitted.
- 1 Spur Pinion 15 tooth, $1\frac{1}{4}$ " pitch, 2" face, bore 1 $\frac{15}{16}$ " pitch keyseated and fitted.

- 1 Shaft 1 15/16"x5' keyseated.
- 2 9 tooth sprockets for No. 104 chain, bore 1 15/16" keyseated and fitted.
- 1 Shaft 2 7/16"x4' keyseated.
- 1 9 tooth sprocket wheel for No. 104 chain, bore 2 7/16, keyseated and fitted.
- 1 Spur gear 60 tooth, 1 1/4" pitch, 3" face, bore 2 7/16" keyseated and fitted.
- 1 Shaft 1 15/16"x4' keyseated.
- 1 Spur Pinion 15 tooth, 1 1/4" pitch, 3 1/4" face, bore 1 15/16, keyseated and fitted.
- 1 9 tooth sprocket wheel for No. 104 chain, bore 1 15/16" keyseated and fitted.
- 1 Shaft 2 7/16x8' keyseated.
- 1 12x9x2 7/16" spur paper friction, keyseated and fitted.
- 1 Pacific Coast Standard Wood Saw Machine, for cutting 4' slabs into 16" lengths.
 - 200' of No. 78 Chain.
 - 180' of No. 104 and C. Chain.
 - 320' of No. 104 and C. Chain.
 - 40' of No. 124 Chain.
 - 900' of No. 74 Chain.
 - 90' of No. 78 Chain (Sec. 24).
 - 90' of No. 104 and C. Chain (Sec. 37).
 - 300' of No. 74 Chain with "n" attachment every third link (Slasher).
 - 25' of No. 82 Riveted Chain.
- 1 Shaft 2 7/16x28 keyseat.
- 1 Spur Gear 24x3 keyseat and fit.

- 1 9 Tooth No. 104 Sprocket, bore 2 & 7/16 keyseat and fit.
- 1 Shaft 1 15/16x3' 6".
- 1 Spur Pinion 12 Tooth, 1 1/4 pitch, 3 1/4 face, keyseat and fit.
- 1 Sprocket 9 tooth No. 104, bore 1 15/16.

Filed September 28, 1911.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 28th day of September, 1911, there was duly filed in said Court, Praecipe for Subpoena, in words and figures as follows, to-wit:

*In the Circuit Court of the United States for the
District of Oregon.*

No. —

THE PACIFIC MACHINERY COMPANY, a
corporation,

Plaintiff,

v.

THE OREGON CITY LUMBER AND MANUFACTURING COMPANY, a corporation, JOHN W. MOFFITT, and JOHN J. COOKE, as assignees of The Oregon City Lumber and Manufacturing Company, and F. T. MEYER.

Defendants.

To the Clerk of the Circuit Court of the United States, for the District of Oregon:

You are hereby requested to issue a subpoena

in the above entitled action, and to direct service upon The Oregon City Lumber and Manufacturing Company at Oregon City, Oregon.

IRA BRONSON,
Counsel for Plaintiff.

Filed, September 28, 1911.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 30th day of October, 1911, there was issued out of said Court a Subpoena ad Respondendum in words and figures as follows, to-wit:

RETURN ON SERVICE OF WRIT.

UNITED STATES OF AMERICA, }
District of Oregon. } ss.

I hereby certify and return that I served the annexed Subpoena ad Respondendum on the therein-named F. T. Meyer by handing to and leaving a true and correct copy thereof together with the copy of the Bill in Equity with him personally at Oregon City in said district on the 26th day of October, A. D. 1911.

LESLIE M. SCOTT,
U. S. Marshal.
By J. B. Marvin, Deputy.

RETURN ON SERVICE OF WRIT.

UNITED STATES OF AMERICA, }
District of Oregon. } ss.

I hereby certify and return that I served the annexed Subpoena ad Respondendum on the therein-named The Oregon City Lumber & Manufacturing Company, a corp., by handing to and leaving a true and correct copy of the Subpoena ad Respondendum, together with the copy of the Complaint thereof, with George W. Bohn as President of said Company Corporation personally at Portland in said district on the 13th day of October, A. D. 1911.

LESLIE M. SCOTT,

U. S. Marshal.

By Leonard Becker, Deputy.

*In the Circuit Court of the United States for the
District of Oregon.*

No. 3843.

IN EQUITY—SUBPOENA AD RESPONDENDUM.

THE PACIFIC MACHINERY COMPANY, a
corporation,

Complainant,

vs.

THE OREGON CITY LUMBER AND MANUFACTURING COMPANY, a corporation, JOHN W. MOFFITT, and JOHN J. COOKE, as assignees of The Oregon City Lumber and Manufacturing Company, and F. T. MEYER.

Defendants.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,
To The Oregon City Lumber and Manufacturing
Company, a corporation, John W. Moffitt, and
John J. Cooke, as assignees of The Oregon City
Lumber and Manufacturing Company, and F. T.
Meyer, Greeting:

You, and each of you, are hereby commanded that you be and appear in said Circuit Court of the United States, at the Court room thereof, in the City of Portland, in said District, on the first Monday of November next, which will be the sixth day of November, A. D. 1911, to answer the exigency of a Bill of Complaint exhibited and filed against you in our said Court, wherein The Pacific Machinery Company, a corporation, is complainant, and you are defendants, and further to do and receive what our said Circuit Court shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you, the Marshal of said district, or your deputy, to make due service of this our writ of subpoena and to have then and there the same.

Hereof fail not.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 28th day of September, in the year of our Lord, One Thousand Nine Hundred and Eleven, and of the Independence of

the United States, the One Hundred and Thirty-sixth.

(Seal)

G. H. MARSH, Clerk.

By J. W. Marsh, Deputy Clerk.

MEMORANDUM pursuant to Equity Rule No. 12
of the Supreme Court of the United States:

The defendant is to enter his appearance in the above entitled suit in the office of the Clerk of said Court on or before the day at which the above writ is returnable; otherwise the complainant's bill therein may be taken pro confesso.

Returned and filed October 30, 1911.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 6th day of November, 1911, there was duly filed in said Court, praecipe for appearance of defendants in words and figures as follows, to-wit:

*In the Circuit Court of the United States for the
District of Oregon.*

No. 3843.

THE PACIFIC MACHINERY COMPANY, a
corporation,

Complainant,

v.

THE OREGON CITY LUMBER AND MANUFACTURING COMPANY, a corporation, JOHN W. MOFFITT, and JOHN J. COOKE, as assignees

of The Oregon City Lumber and Manufacturing
Company, and F. T. MEYER,

Defendants.

To the Clerk of the above entitled Court:

You will please enter my appearance as Solicitor
in the above entitled cause for the defendants and
each of them.

C. D. & D. C. LATOURETTE,
DOLPH, MALLORY, SIMON & GEARIN.

Filed, November 6, 1911.

G. H. MARSH, Clerk.

And afterwards, to-wit, on Friday, the 7th day of
December, 1911, the same being the 57th Judicial
Day of the regular October, 1911, term of said
Court; Present: the Honorable Robert S. Bean,
United States District Judge presiding, the fol-
lowing proceedings were had in said cause, to-
wit:

*In the Circuit Court of the United States for the
District of Oregon.*

No. 3843.

December 7, 1911.

PACIFIC MACHINERY COMPANY,

v.

OREGON CITY LUMBER & MANUFACTURING
COMPANY, et al.

Now, at this day, on motion of Mr. John M.

Gearin, of counsel for the defendants in the above entitled cause, it is ordered that said defendants be, and they are hereby allowed ten days from this date in which to plead to the bill of complaint herein.

And afterwards, to-wit, on the 14th day of December, 1911, there was duly filed in said Court, Demurrer in words and figures as follows, to-wit:

*In the Circuit Court of the United States for the
District of Oregon.*

THE PACIFIC MACHINERY COMPANY, a
corporation,
Plaintiff,

v.

THE OREGON CITY LUMBER AND MANUFACTURING COMPANY, a corporation, JOHN W. MOFFITT and JOHN J. COOKE, as assignees of The Oregon City Lumber and Manufacturing Company, and F. T. MEYER,
Defendants.

Demurrer of the defendants Oregon City Lumber and Manufacturing Company, John W. Moffitt, and John J. Cooke, assignees of the Oregon City Lumber and Manufacturing Company, and F. T. Meyer.

These defendants by protestation not confessing all or any of the matters and things in the Plaintiff's Bill of Complaint contained to be true in such

manner and form as the same is therein set forth and alleged, do demur to said Bill and for cause of demurrer show :

I.

That said Bill doth not contain any matter of equity whereon this Court can ground any decree or give to the plaintiff any relief against these defendants, or either of them.

WHEREFORE, and for divers other good causes of demurrer appearing in the Bill, defendants doth demur thereto and humbly demand the judgment of this Court whether they shall be compelled to make any further or other answer to the said Bill and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

JOHN J. COOKE.

STATE OF OREGON, }
County of Multnomah. } ss.

John J. Cooke makes solemn oath and says: that the foregoing demurrer is not interposed for delay.

JOHN J. COOKE.

Subscribed and sworn to before me this 12th day of December, A. D. 1911.

(Notarial seal)

C. D. LATOURETTE,
Notary Public for Oregon.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

JNO. M. GEARIN,
Attorney for Defendants.

Copy of the within demurrer left at my office for plaintiff this 14th day of December, 1911.

G. H. MARSH, Clerk.

Above copy mailed to Ira Bronson, attorney for plaintiff, addressed to Colman Building, Seattle, Wash., this December 14, 1911.

G. H. MARSH, Clerk.

Filed, December 14, 1911.

G. H. MARSH, Clerk.

*In the District Court of the United States for the
District of Oregon.*

And afterwards, to-wit, on Monday, the 27th day of May, 1912, the same being the 73d Judicial Day of the regular March, 1912, term of said Court; Present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

*In the District Court of the United States for the
District of Oregon.*

ORDER.

THE PACIFIC MACHINERY COMPANY, a
corporation,

Plaintiff,

v.

THE OREGON CITY LUMBER AND MANUFACTURING COMPANY, a corporation, JOHN W.

MOFFITT and JOHN J. COOKE as assignees
of The Oregon City Lumber and Manufacturing
Company, and F. T. Meyer,

Defendants.

At this time this matter coming on to be heard upon the demurrer filed herein by defendants, plaintiff appearing by Ira Bronson, its attorney, and defendants appearing by Dolph, Mallory, Simon & Gearin, their attorneys, whereupon the said demurrer is argued and submitted, and the Court being fully advised in the premises, sustains said demurrer.

And plaintiff, by its attorney, in open Court declining to plead further,

It is ordered, considered, adjudged, and decreed that plaintiff's bill be dismissed and that defendants have and recover judgment against plaintiff for their costs and disbursements herein taxed at \$21.00.

CHAS. E. WOLVERTON, Judge.

Filed, May 27, 1912.

A. M. CANNON, Clerk.

And afterwards, to-wit, on the 28th day of May, 1912, there was duly filed in said Court, Cost Bill in words and figures as follows, to-wit:

In the District Court of the United States for the District of Oregon.

No. —

THE PACIFIC MACHINERY CO.

vs.

THE OREGON CITY LUMBER CO., et al.

Statement of disbursements claimed by the	
..... in the above entitled cause, viz.:	
Clerk's fees	\$ 1.00
Attorney's fees	20.00

Total taxed at	\$21.00
----------------------	---------

A. M. CANNON, Clerk.

By F. H. Drake, Deputy.

No. 3843.

In the District Court of the United States for the District of Oregon.

THE PACIFIC MACHINERY CO.

vs.

THE OREGON CITY LUMBER CO., et al.

COST BILL.

Filed May 28, 1912.

A. M. CANNON, Clerk.

DISTRICT OF OREGON, ss.

I, Jno. M. Gearin, being duly sworn, on my oath say that I am one of the attorneys for the defend-

ants in the above entitled cause; that the disbursements set forth herein have been actually and necessarily incurred in the prosecution of this suit; and that said defendants are entitled to recover the same from the plaintiff as I verily believe.

JNO. M. GEARIN.

Subscribed and sworn to before me this May 28, 1912.

A. M. CANNON,
U. S. Comm'r.

UNITED STATES OF AMERICA, }
District of Oregon. } ss.

I, A. M. Cannon, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing and attached papers constitute the Judgment Roll in Cause No. 3843, Pacific Machinery Co. vs. Oregon City Lumber Co., et al., and that the copies of Journal entries herein are true copies of the same and of the whole thereof.

In testimony whereof I have hereunto set my hand this 14th day of June, A. D. 1912.

A. M. CANNON, Clerk.

By F. H. Drake, Deputy Clerk.

Judgment Roll filed June 14, 1912.

A. M. CANNON, Clerk.

And afterwards, to-wit, on the 14th day of November, 1916, there was duly filed in said Court and

cause, a Petition for Writ of Error, in words and figures as follows, to-wit:

PETITION FOR WRIT OF ERROR.

Now comes F. T. Meyer, defendant herein, and says that on or about the 16th day of October, this Court entered judgment herein in favor of the plaintiff and against the defendant, ordering and adjudging that the plaintiff have and recover of and from the defendant the possession of all of the property sued for in this action, to-wit: all the property described in Plaintiff's Complaint herein except the last nine items on page 6 of the schedule attached thereto and all the items on pages 7 and 8 of such schedule, save the last, or in the event that possession thereof be refused or not delivered, that the plaintiff have judgment against the defendant for the sum of Forty-two Hundred Forty-three and 50/100 Dollars (\$4243.50), with interest thereon at the rate of six per cent per annum from the 19th day of September, 1916, and that the plaintiff recover its costs herein, in which judgment and the proceedings had thereunto certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the Assignment of Errors which is filed with this petition;

WHEREFORE, this defendant prays that a Writ of Error may issue in this behalf to the United States Circuit Court of Appeals for the Ninth Circuit for the correction of errors so complained of, and that a transcript of the record proceedings and

papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals. And defendant, petitioner herein, prays that the judgment rendered in this cause as above described may be reversed, held for naught and that said cause be remanded for further proceedings.

F. T. MEYER, Petitioner.
DOLPH, MALLORY, SIMON & GEARIN
and HALL S. LUSK,
Attorneys for Defendant.

Due service of the foregoing petition for Writ of Error is hereby admitted this 13th day of November, 1916.

BRONSON, ROBINSON & JONES,
Attorneys for Plaintiff.

Filed November 14, 1916.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 14th day of November, 1916, there was duly filed in said Court and cause, an Assignment of Errors, in words and figures as follows, to-wit:

ASSIGNMENT OF ERRORS.

The defendant in this action in connection with his Petition for a Writ of Error, makes the following Assignment of Errors, which he avers occurred upon the trial of the cause, to-wit:

I.

The District Court of the United States for the District of Oregon erred in refusing to find that the personal property to recover the possession of which this action was brought was sold to the Oregon City Lumber & Manufacturing Company for the purpose of having the same installed in and to become a part of a mill then in course of remodeling by said Oregon City Lumber & Manufacturing Company, and in refusing to find that the plaintiff had full knowledge at the time of such sale of the purpose for which said machinery was purchased and would be used.

II.

The said Court erred in refusing to find that said personal property became a part of the said mill owned by said Oregon City Lumber & Manufacturing Company and still remains attached to and a part of said mill.

III.

The said Court erred in deciding that said personal property was a subject of replevin and in not finding that when said property became affixed to said mill building it became a part of the realty and no longer subject to replevin.

IV.

The said Court erred in deciding that the said sale of said personal property to the Oregon City Lumber & Manufacturing Company was a condi-

tional sale, and in refusing to find that the same was an absolute sale and vested complete title to said personal property in the Oregon City Lumber & Manufacturing Company.

V.

The said Court erred in refusing to find that no memorandum of the sale of said personal property, stating the terms of said sale or any description of said personal property or signed by the vendor or vendee, nor any memorandum whatever was ever filed in the County Clerk's office or Recorder's office of the County of Clackamas, State of Oregon, at any time.

VI.

The said Court erred in refusing to find that, although the sale of said property might have been intended by the plaintiff to have constituted a conditional sale, retaining title to the property in plaintiff, yet by the provision of Section 7414, Lord's Oregon Laws, plaintiff not having filed any memorandum of said sale as required by that section, the condition became void, and the title vested absolutely in the Oregon City Lumber & Manufacturing Company.

VII.

The said Court erred in refusing to find that on the 21st day of April, 1911, after having given due notice as provided by statute, the assignee of the Oregon City Lumber & Manufacturing Company duly and regularly sold all of said personal prop-

erty to the defendant in this suit, and delivered possession thereof to said defendant; and in refusing to find that the plaintiff herein had actual notice thereof and was present at the time of said sale and made no objection thereto.

VIII.

The said Court erred in refusing to find that the plaintiff, by permitting said sale and by being present at said sale and not objecting thereto, must be held to have waived any rights which it might have had and is now estopped to assert such or any rights in opposition to the title of the defendant to said property.

IX.

The said Court erred in awarding and entering judgment in favor of the plaintiff and against the defendant for the possession of said property, or the value thereof, and in not awarding and entering judgment in favor of the defendant for his costs and disbursements.

X.

The said Court erred in overruling defendant's objection to the questions asked the witness Edward I. Garrett as to the significance of the phrase "machinery contract," as used by the trade, and allowing said witness to answer: "It is a general term that is commonly used in the sale of machinery, whereby the vendor intends to retain title until the machinery is paid for," and said Court erred in overruling defendant's objection to the question

asked said witness: "How does it compare with the phrase "conditional sale?", and in allowing said witness to answer: "Synonymous." (See Bill of Exceptions, pages 2 and 3.)

DOLPH, MALLORY, SIMON & GEARIN
and HALL S. LUSK,
Attorneys for Defendant.

Due service of the foregoing Assignment of Errors is hereby admitted this 13th day of November, 1916.

BRONSON, ROBINSON & JONES,
Attorneys for Plaintiff.

Filed November 14, 1916.

G. H. MARSH, Clerk.

And afterwards, to-wit, on Tuesday, the 14th day of November, 1916, the same being the 8th Judicial Day of the regular November, 1916, term of said Court; Present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

ORDER ALLOWING WRIT OF ERROR.

On this 14th day of November, 1916, comes the defendant, by his attorneys, and files herein and presents to the Court, his Petition, praying for the allowance of a Writ of Error intended to be urged by it and praying also that a transcript of the record and proceedings and papers upon which the judg-

ment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such appeal and further proceedings may be had as may be proper in the premises.

On consideration whereof, the Court does allow the Writ of Error upon the defendant giving bond according to law, in the sum of \$5000, which shall operate as a supersedeas bond.

CHAS. E. WOLVERTON, Judge.

Filed November 14, 1916.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 14th day of November, 1916, there was duly filed in said Court and cause, a Bond on Writ of Error, in words and figures as follows, to-wit:

BOND ON WRIT OF ERROR.

KNOW ALL MEN BY THESE PRESENTS, That F. T. Meyer, as principal, and C. D. Latour-ette, as surety, are held and firmly bound unto the said plaintiff above named, in the full and just sum of Five Thousand (\$5,000.00) Dollars to be paid to the said plaintiff, its successors and assigns; to which payment well and truly to be made, we bind ourselves and our and each of our executors, administrators and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 14th day of November, A. D. 1916; and,

WHEREAS, lately at a District Court of the United States for the District of Oregon, in a suit pending in said Court between the said plaintiff and the defendant above named, a judgment was rendered against the said defendant, and the said defendant having obtained a Writ of Error and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the plaintiff above named citing and admonishing it to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in said Circuit, on the day of next.

Now, the condition of the above obligation is such, that if the said defendant shall prosecute said Writ of Error to effect and answer all damages and costs if he fail to make the said plea good, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in the presence of:

B. B. McCarthy.

F. T. MEYER,
Principal.

By DOLPH, MALLORY, SIMON & GEARIN,
His Attorneys.

C. D. LATOURETTE (seal),
Surety.

Examined and approved this 14th day of November, A. D. 1916.

CHAS. E. WOLVERTON,
Judge.

I, C. D. Latourette, being first duly sworn, say that I am a resident of the State of Oregon and a freeholder, and am worth the sum of Ten Thousand Dollars, over and above my just debts and property exempt from execution.

C. D. LATOURETTE.

Subscribed and sworn to before me this 14th day of November, A. D. 1916.

(Seal)

B. B. McCARTHY,
Notary Public for Oregon.
My Commission expires Oct. 29, 1919.

Due service of the foregoing Bond on Writ of Error is hereby admitted this 13th day of November, 1916.

BRONSON, ROBINSON & JONES,
Attorneys for Plaintiff.

Filed November 14, 1916.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 16th day of November, 1916, there was duly filed in said Court and cause, a Praecipe for Transcript, in words and figures as follows, to-wit:

PRAECIPE FOR TRANSCRIPT.

To the Clerk of the United States Court :

Kindly prepare for us a Transcript of Record in the above cause, and include therein the following documents :

Amended Complaint.

Answer.

Reply.

Verdict.

Judgment of October 16, 1916.

Bill of Exceptions.

All the Exhibits (except those which are copied in the Bill of Exceptions).

Petition for Writ of Error.

Assignment of Errors.

Order allowing Writ of Error.

Writ of Error.

Bond.

Citation on Writ of Error.

DOLPH, MALLORY, SIMON & GEARIN

and HALL S. LUSK,

Attorneys for Plaintiff in Error.

Filed November 16, 1916.

G. H. MARSH, Clerk.

STIPULATION WAIVING JURY TRIAL.

It is hereby stipulated by and between the parties to the above entitled suit that a jury is waived and that this case be tried without the intervention of a jury by the court.

BRONSON, ROBINSON & JONES,
Attorneys for Plaintiff.

DOLPH, MALLORY, SIMON & GEARIN,
Attorneys for Defendant.

Filed January 4, 1916. G. H. MARSH, Clerk.

UNITED STATES OF AMERICA, }
 District of Oregon. } ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, pursuant to the foregoing Writ of Error and in obedience thereto, do hereby certify that the foregoing printed transcript of record, in the case in said Court in which The Pacific Machinery Company, a corporation, is plaintiff and defendant in error and F. T. Meyer is defendant and plaintiff in error, has been prepared by me in accordance with the law and the rules of court, and in accordance with the direction of the praecipe for transcript filed by said plaintiff in error; and I further certify that the foregoing transcript is a full, true and correct transcript of the record and proceedings had in said Court in said cause, which the said praecipe designated to be included therein, as the same appear of record and on file at my office and in my custody.

And I further certify that the cost of the foregoing transcript is \$....., for printing said transcript, and that the same has been paid by said plaintiff in error.

In testimony whereof I have
 hereunto set my hand and
 affixed the seal of said Court
 at Portland, in said District,
 this.....day of January,
 1917.

Clerk.